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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 132.

R. H. LINDSAY, ASSESSOR OF THE PARISH OF CADDO, LOUISIANA; THE STATE OF LOUISIANA, THE POLICE JURY OF SAID PARISH OF CADDO AND SAID PARISH, AND THE CITY OF SHREVEPORT, LOUISIANA, APPELLANTS AND PLAINTIFFS IN ERROR,

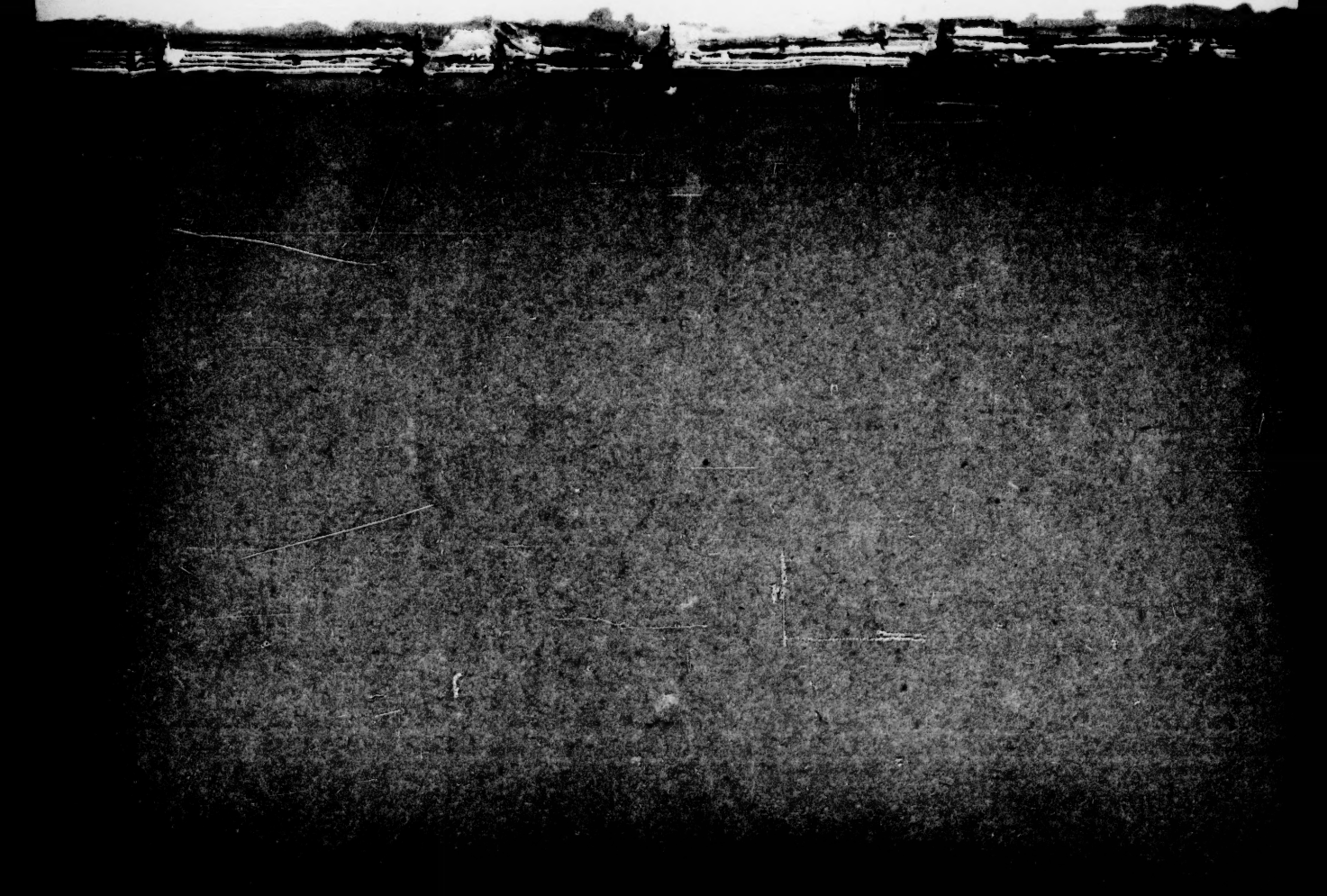
vs.

THE FIRST NATIONAL BANK OF SHREVEPORT, LOUISIANA; EDWARD JACOBS, PRESIDENT.

APPEAL FROM AND IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF LOUISIANA.

FILED APRIL 20, 1891.

(14,585.)



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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JUNE 26, 1894.

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1 *Petition.*

To the honorable the circuit court of the United States for the fifth circuit & western district of Louisiana:

The petitioner of the First National Bank of Shreveport, a corporation created and existing under the laws of the United States, having its domicile at Shreveport, Louisiana, with respect represents that the capital stock of said corporation is divided into 2,000 shares of one hundred dollars each, and that said shares are held & owned by following persons: S. G. Dreyfus, F. M. Hicks, Henry Florsheim, C. H. Ardis, James F. Utz, the estate of Joseph B. Smith, H. F. Doll, R. I. Cole, J. Ricon, A. Cahn, W. B. Jacobs, E. Jacobs, Herman Kretz, Sam. B. Hicks, E. J. Leman, Miss Elsie Jacobs, Mrs. C. B. Skannal, Mrs. P. C. Bryan, J. C. Hamilton, W. E. Hamilton, & Miss Katie E. Hamilton.

That Robert H. Lindsay, assessor of, in, and for the parish of Caddo, assessed the shares of stock of said corporation against said stockholders on the tax-roll of the current year 1889 at the rate of eight dollars per share, aggregating the sum of $160,000.00 *dollars.*

That such assessment being unlawful, er-oneous, unjust, excessive, & inequitable, your petitioner and said stockholders in due
2 time, manner, and form applied to the police jury of said parish, sitting as a board of reviewers under the provisions of the revenue laws of said State, for the cancellation of said assessment or to have same corrected, but said board of reviewers failed and refused to cancel or correct such assessment, which now appears on the "tax-roll for the year 1889" of said parish.

Your petitioner avers that under existing laws on all property subject to taxation the State levies a tax of six mills on the dollar of valuation.

The parish of Caddo, through its police jury, levies a tax of eight mills on the dollar of valuation and the city of Shreveport levies a tax of twenty-three & ¾ mills on the dollar of valuation, making a total tax of 37¾ mills on the dollar of valuation.

That under said illegal & er-oneous assessment the State of Louisiana, the parish of Caddo, and the city of Shreveport will attempt to collect such taxes aggregating the sum of $6,040.00, six thousand & forty dollars, from your petitioner, unless prevented by the decree of this honl. court.

Your petitioner represents that the State of Louisiana has no power or right to tax in any manner the capital stock of any
3 national bank, except so far as such power and right has been granted by the Congress of the United States; that under existing laws of the United States the State may determine & direct the manner of taxing all shares of national banks having their domicil in the State, provided such taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of the State, and that the true intent and meaning of such proviso is that the tax assessed on the shares

of national banks shall be equal and uniform with the tax assessed and levied on other property in said State and the individual owners thereof.

Petitioner avers that by the statute of the United States authorizing the State to tax, under certain limitations, shares on national banks by "the law of the land" and by the constitution & laws of the State of Louisiana it is expressly provided that taxation shall be equal and uniform.

Petitioner further avers that the assessment so as aforesaid made violates the principles of equity and uniformity in this, that the said Lindsay, assessor, has assessed said shares of stock at a much higher value proportionately than that which he assessed
4 other property of other citizens subject to taxation, the assessment of said shares being twice as high as that placed on other property.

That the tax as assessed on said shares is greater than that assessed on other moneyed capital in the hands of individual citizens of said State; that the said assessor, Lindsay, has willfully failed and neglected to assess & place on said "tax-roll" moneys in the possession of citizens of the State and moneys by such citizens loaned out, bonds, judgments, notes, accounts, and other credits held by and due to citizens of the State and property of other kinds owned by citizens of the State & by persons not citizens of the State, all of which was & is subject to taxation and should have been assessed and placed on said "tax-roll," and your petitioner avers that the value of said property so omitted from said tax-roll exceeded, at the time the assessment should have been made, the sum of one million dollars.

Your petitioner further avers that the acts of omission and commission of the said assessor, Lindsay, relating to said tax-roll destroy the uniformity of the rule fixed by the constitutions & laws
5 aforesaid, violate the obligation therein imposed to treat all property alike, to the end that all property may bear an equal burden of taxation, and are subversive of the act of Congress allowing shares in national banks to be taxed, which act intended to protect the owners of such shares from greater burdens than are imposed on other moneyed capital in the State where such banks are located.

And your petitioner further avers that the necessary effect of the proceedings had in the assessment & levy of the tax standing against the shareholders of said bank and now about to be enforced has been to deprive such shareholders, both in the matter of valuation and equalization, of all benefits of the constitution and laws of the State, by which only uniformity in the burden of taxation upon all descriptions of property can be secured; to take from them, the said shareholders, the security afforded by the limitation in the act of Congress and to impose upon them such excessive exactions as to make the franchises granted by said act of Congress comparatively useless.

Your petitioner avers that the constitution of Louisiana, adopted

A. D. 1879, orders that taxation shall be equal and uniform
6 throughout the territorial limits of the authority levying the tax; that all property shall be taxed in proportion to its value, and that in order to arrive at equality and uniformity—

The General Assembly shall, at its first session after the adoption of said constitution, provide a system of equality & uniformity of assessment based upon the relative value of property in the different portions of the State.

Petitioner avers further that the said General Assembly has failed and neglected to comply with the requirements of the organic & supreme law of the State, is therefore absolutely without power to enact any law providing for the assessment, levy, or collection of any tax, and that the act of said assembly under which the assessment aforesaid was made & under which an attempt will be made to levy and collect the tax standing against said shareholders as aforesaid is unconstitutional, null, and void.

Your petitioner avers that the said assessment against said shareholders and the tax standing against them on said "tax-roll" are illegal, null, and void, and that said tax cannot be lawfully collected from said shareholders or from petitioner.

7 Your petitioner further avers that in arriving at the assessment of said shares in said bank said assessor, Lindsay, & said police jury, sitting as a board of reviewers, took the capital stock of said bank, viz., $200,000.00, and added thereto $40,000.00, the earnings of the bank, which did not and does not in any manner constitute any portion of the capital stock of the bank, & which the bank held & holds in United States bonds, by law exempted from taxation.

And your petitioner represents that section 29 of act No. 85 of the General Assembly of Louisiana, session of 1888, the existing revenue act of said State, provides that the actual shares of stock of every national bank shall be assessed to the stockholders, and the taxes so assessed shall be paid by the bank, and that all property owned by the bank taxable under section 1 of said act shall be assessed directly to the bank, and the *pro rata* of such direct-taxes and of all exempt property proportioned to each share of capital stock shall be deducted from the amount of taxes assessed to that share under said section 29.

Petitioner avers further that the said earnings, having been
8 and being invested in property exempted from taxation, the said assessors and said police jury should have deducted same proportionately from the amount of taxes assessed to each share in said bank.

Petitioner avers that by the provisions of the 29th section of said act No. 85 of the General Assembly of Louisiana, session of 1888, your petitioner is required to pay the taxes assessed to its stockholders.

Petitioner represents that the corporation known as the First National Bank of Shreveport is a juridical person, separate and distinct from each and every person holding stock therein, and is not and cannot be bound to discharge the obligations of such other per-

sons, and that the said provisions of said section of said act violate the Constitution of the United States, conflict with the underlying principles of free government, and are forbidden by "the law of the land."

Petitioner further represents that this is a case arrising under the Constitution & laws of the United States which raises Federal questions, & that this honl. court has jurisdiction to hear and determine same.

The premises considered, petitioner prays that the said
9 R. H. Lindsay, assessor; said police jury of Caddo parish, through its president, J. M. Foster, and the city of Shreveport be cited to answer hereto; that after all legal notices & delays there be judgment in favor of petitioners declaring said assessment null & void & prohibiting the collection of any tax from petitioner or its shareholders; or, in the event the court should not hold said assessment absolutely null, petitioner prays for a judgment reducing said assessment so as to make it equal and uniform with other assessments and striking therefrom the amount of property held by the bank exempted from taxation, as hereinbefore set forth; and petitioner prays for all orders & decrees necessary in the premises, for costs, & for general relief.

A. H. LEONARD,
Att'y for Petitioner.

Endorsed: No. 151. First National Bank *vs.* R. H. Lindsay, assessor, *et al.* Petition. Filed September 5th, 1889. J. B. Beattie, clerk.

10 *Extract of Minutes.*

TUESDAY, *February 25th*, 1890.

Court met pursuant to adjournment.
Present: His Hon. Aleck Boarman, dist. judge, presiding.

FIRST NATIONAL BANK *vs.* R. H. LINDSAY, Assessor, *et al.* } No. 151. Exception Filed on Behalf of Defendants.

Exception.

U. S. Circuit Court, Western Dist. of La.

FIRST NATIONAL BANK *vs.* R. H. LINDSAY, Assessor, *et al.* } No. 151.

Now come defendants in the above-entitled suit and except to plaintiff's suit, which is in the law side of the court, on the ground and for the reason that the allegations of plaintiff's bill or petition show that his remedy is not by an action at law, but by injunction and bill in equity, and this court is without jurisdiction to entertain this suit as an action at law.

Whereupon defendants pray that this exception be sustained and plaintiff's suit be dismissed with costs.

J. HENRY SHEPHERD,
District Attorney 1st Judicial Dist. of La.
11 A. D. LAND,
City Att'y for City of Shreveport.

Endorsed: No. 151. U. S. circuit court, western dist. of La. First National Bank *vs.* R. H. Lindsay, assessor, *et al.* Exception. Filed Feb'y 25th, 1890. J. B. Beattie, clerk.

Extract of Minutes.

WEDNESDAY, *Feb'y 26th*, 1890.

Court met pursuant to adjournment.
Present: His Hon. Aleck Boarman, dist. judge, presiding.

FIRST NATIONAL BANK
vs.
R. H. LINDSAY, Assessor, *et al.* } No. 151.

On motion of A. D. Land, Esq., the exception filed herein on behalf of defendants was assigned for hearing tomorrow, Thursday, February 27th, 1890.

12 *Extract of Minutes.*

THURSDAY, *February* 27, 1890.

Court met pursuant to adjournment.
Present: His Hon. Aleck Boarman, dist. judge, presiding.

FIRST NATIONAL BANK
vs.
R. H. LINDSAY, Assessor, *et al.* } No. 151.

Exception filed herein on behalf of defendants as per assignment came on to be heard; after argument the same was overruled.

Amended Petition.

U. S. Circuit Court, Western Dist. La.

FIRST NATIONAL BANK
vs.
R. H. LINDSAY, Assessor, *et al.* } No. 151.

To the hon. circuit court aforesaid:

The amended & supplemental petition of plaintiffs with respect represents that the bank holds the amount of one hundred & eighty-three thousand dollars in bonds of the United States, constituting a portion of its capital, and so held same at the time of the unequal & illegal assessment set forth in original petition, and petitioner avers that in assessing said capital stock in which said amount of

bonds was included there was and is an unjust discrimina-
13 tion against your petitioners and its stockholders, and the shares of the stockholders in said company are assessed at a greater rate than was assessed upon moneyed capital in the hands of individual citizens of the State; that United States bonds in the hands of individual citizens of the State were not and are not assessed or taxed.

That the statute of the State of Louisiana under which said assessment was — discriminates unjustly against petitioner and its stockholders and violates the principle of equality & uniformity in taxation by exempting such United States bonds from taxation when held by individual citizens of the States and taxes same when held by your petitioner and its stockholders.

Petitioner avers said assessment and the statute under which it was made are null & void.

Adopting all allegations of original petition not inconsistent herewith, petitioner asks relief as therein prayed for.

A. H. LONARD,
Att'y for Petitioner.

14 Endorsed: No. 151. U. S. circuit court, western dist. of La. First National Bank *vs.* R. H. Lindsay, assessor, *et al.* Amended petition. Filed June 10th, 1890. J. B. Beattie, clerk.

Service accepted & citation waived May 16th, 1890.
A. D. LAND, *City Att'y.*

Exception to Amended Petition.

U. S. Circuit Court, Western District of La.

FIRST NATIONAL BANK
vs. } No. 151.
R. H. LINDSAY, Assessor, *et al.*

Now come defendants in the above-entitled suit and except to the amended and supplemental petition filed by the plaintiff on the ground and for the reason that the allegations therein contained disclose no course of action against these defendants.

15 Wherefore they pray that this exception be sustained and said petition be dismissed at plaintiff's costs.

J. H. SHEPHERD,
Dist. Att'y 1st Jud. Dist., La.
A. D. LAND, *City Att'y.*

Endorsed: No. 151. U. S. circuit court, western dist. of La. First National Bank *vs.* R. H. Lindsay, assessor, *et al.* Exception to amended petition. Filed July 21st, 1890. J. B. Beattie, clerk.

Extract of Minutes.

MONDAY, *July* 21*st*, 1890.

Court met pursuant to adjournment.
Present: His Hon. Aleck Boarman, dist. judge, presiding.

FIRST NATIONAL BANK
vs.
R. H. LINDSAY, Assessor, *et al.*

Exception to amended petition filed, and, after argument, the same was overruled.

On motion of A. H. Leonard, Esq., attorney for plaintiff, it was ordered that a default be entered herein against all the defendants on the original and amended petitions.

16 *Extract of Minutes.*

WEDNESDAY, *July* 23*rd*, 1890.

Court met pursuant to adjournment.
Present: His Hon. Aleck Boarman, dist. judge, presiding.

FIRST NATIONAL BANK
vs.
R. H. LINDSAY, Assessor, *et al.* } No. 151.

Answer filed.

Answer.

U. S. Circuit Court, Western District of La.

FIRST NATIONAL BANK
vs.
R. H. LINDSAY, Assessor, *et al.* } No. 151.

Now comes defendants in the above-entitled suit and, for answer to plaintiff's original & amended petitions, deny all and singular the allegations therein contained except such as may be hereinafter specially admitted.

For further answer respondents admit that the shares of stock of plaintiff bank were assessed in the assessment-roll of 1889 to the respective shareholders named in the petition at a valuation of eighty dollars on each share of the face value of one hundred dollars.

Respondents aver that said assessment was at the rate of two-
17 thirds of the actual cash value of such shares, which were at the date of said assessment worth in the market the sum of one hundred and twenty dollars in cash per share, if not more.

Respondents specifically deny that the assessor on the board of reviewers in and for the parish of Caddo have wilfully or intentionally omitted any property from assessment or taxation for the year 1889 and aver that if there was "moneyed capital in the hands of

individuals" in said parish not assessed for the year 1889 the same belonged largely to the shareholders of plaintiff bank and was not returned by them for assessment, according to law.

Respondents specially deny that they have discriminated or attempted to discriminate in any manner against the shareholders of plaintiff's bank, and specially deny that said bank or its shareholders have any just cause of complaint in the premises.

Wherefore respondents pray to be hence dismissed with costs.

J. H. SHEPHERD,
District Attorney.
A. D. LAND,
City Attorney, for Defendants.

18 Endorsed: No. 151. U. S. circuit court, west. dist. La. First National Bank *vs.* R. H. Lindsay, assessor, *et al.* Answer. Filed July 23rd, 1890. J. B. Beattie, clerk.

Extract of Minutes.

WEDNESDAY, *Feb'y 25th*, 1891.

Court met pursuant to adjournment.
Present: His Hon. Aleck Boarman, dist. judge, presiding.

FIRST NATIONAL BANK
vs.
R. H. LINDSAY, Assessor, *et al.* } No. 151.

Assigned for trial on Tuesday, March 3rd, 1891.

Extract of Minutes.

WEDNESDAY, *March 4th*, 1891.

Court met pursuant to adjournment.
Present: His Hon. Aleck Boarman, dist. judge, presiding.

FIRST NATIONAL BANK
vs.
R. H. LINDSAY, Assessor, *et al.* } No. 151.

As per assignment, this case came on at this time to be heard.

19 Whereupon came the following jury, to wit, M. Dingle, M. Bernstein, Joe C. Elstner, Wm. Harper, Munroe Benton, J. C. Beasley, Z. Howell, S. C. Perrin, I. L. Helpman, Geo. W. Lepord, Ben. Landman, Dan. Donovan, twelve good and lawful men of the district, duly empanneled and sworn to try this case and a true verdict render according to the evidence. The jury being complete, the court appointed Z. Howell, Esqr., as foreman thereof and the trial was proceeded with. After the introduction in part the case was continued until tomorrow, Thursday, March 5th, 1891.

By consent of counsel, D. Donovan, Esq., was excused from further attendance as a juror in this case.

Extract of Minutes.

THURSDAY, *March 5th*, 1891.

Court met pursuant to adjournment.
Present: His Hon. Aleck Boarman, dist. judge, presiding.

FIRST NATIONAL BANK
vs.
R. H. LINDSAY, Assessor, *et al.* } No. 151.

This case came on again to be heard at this time; evidence introduced in part and continued until tomorrow, Friday, March 6th, 1891.

20 *Extract of Minutes.*

FRIDAY, *March 6th*, 1891.

Court met pursuant to adjournment.
Present: His Hon. Aleck Boarman, dist. judge, presiding.

FIRST NATIONAL BANK
vs.
R. H. LINDSAY, Assessor, *et al.* } No. 151.

As per assignment, this case came on again at this time to be heard.

Upon conclusion of the introduction of the evidence the case was continued, for argument, until tomorrow, Saturday, March 7th, 1891.

Extract of Minutes.

SATURDAY, *March 7th*, 1891.

Court met pursuant to adjournment.
Present: His Hon. Aleck Boarman, dist. judge, presiding.

FIRST NATIONAL BANK
vs.
R. H. LINDSAY, Assessor, *et al.* } No. 151.

This case came on again at this time to be heard, was argued in part, and continued until Monday, March 9th, 1891, for further argument.

Extract of Minutes.

MONDAY, *March 9th*, 1891.

Court met pursuant to adjournment.
Present: His Hon. Aleck Boarman, district judge, presiding.

21 FIRST NATIONAL BANK
vs.
R. H. LINDSAY, Assessor, *et al.* } No. 151.

This case came on again at this time to be heard. Upon conclusion of the argument and charge of the court the jury retired in custody of the marshal to consider of their verdict.

Extract of Minutes.

TUESDAY, *March 10th*, 1891.

Court met pursuant to adjournment.
Present: His Hon. Aleck Boarman, dist. judge, presiding.

FIRST NATIONAL BANK
vs.
R. H. LINDSAY, Assessor, *et al.* } No. 151.

This case came on again at this time to be heard and the jury, coming into court, rendered the following verdict:

We, the jury, find the assessable value of each share of stock in plaintiff's bank is twenty-three dollars and a half after deducting from the assessment in controversy the amount of United States and State bonds held by the bank as portion of its capital stock.

Z. HOWELL, *Foreman.*

22 The verdict was ordered to be filed, made of record, and the jury discharged from further consideration of this case.

Extract of Minutes.

SATURDAY, *March 14th*, 1891.

Court met pursuant to adjournment.
Present: His Hon. Aleck Boarman, dist. judge, presiding.

FIRST NATIONAL BANK
vs.
R. H. LINDSAY, Assessor, *et al.* } No. 151.

Plaintiff's and defendants' bills of exception signed and filed.
Motion for a new trial filed and same overruled.
Judgment signed and filed. See decree.
Petition for writ of error filed.
Objection to application for writ of error filed.
Writ of error refused.

Defendants' 1st Bill of Exceptions.

U. S. Circuit Court, Western District of La.

FIRST NATIONAL BANK
vs.
R. H. LINDSAY, Assessor, *et al.*

Be it remembered that on the trial of the above-entitled suit before the jury, on the 6 day of March, 1891, defendants' counsel offered to prove by J. M. Foster, a witness then on the stand in behalf of the defendants, that E. J. Leman and other share-
23 holders named in plaintiff's petition had admitted to said witness recently that they and each of them considered the

assessment of their respective shares in plaintiff bank as set forth in plaintiff's petition, to wit, at $80.00 on the hundred of face value, not excessive as compared with the assessed value of property generally in the parish of Caddo, State of La., in the year 1889, for the purpose of State, parish, and city taxation, and that therefore plaintiff's counsel objected to said witness testifying as to said admissions on the following grounds, viz:

Which objections were sustained by the court and said testimony ruled out as inadmissible.

Defendant offered to show by Leman, a shareholder in said bank, that he admitted to Foster, a witness then on the stand, that $80.00 on the hundred of face value was not excessive compared with the assessed value of property generally in the parish of Caddo, State of Louisiana. The evidence as to Leman's admission was ruled out because the bank, as a corporation, could not be affected by the admissions of Leman if they were made to Foster; that his statement at most could only bind himself and could not bind
24 the bank or any one else in the suit. Foster was the only witness offered in relation to Leman's statement, and he was not asked about the admissions of any other shareholders.

To which ruling defendants' counsel did then and there except as er-oneous and to their prejudice, & reserved the right to file a bill of exceptions to the same; in testimony whereof the said defendants in due time presented this their bill of exceptions and prayed that it be signed, filed, & made a part of the record of this cause, and it was so done.

ALECK BOARMAN, *Judge.*

Endorsed: No. 151. U. S. circuit court, western dist. La. First National Bank *vs.* R. H. Lindsay, assessor, *et al.* Defendants' first bill of exceptions. Filed March 11th, 1891. J. B. Beattie, clerk.

25 *Defendants' 2ond Bill of Exceptions.*

U. S. Circuit Court, Western District of La.

FIRST NATIONAL BANK
vs.
R. H. LINDSAY, Assessor, *et al.* } No. 151.

Be it remembered that on the trial of the above-entitled case before the jury on March the 5th, 1891, plaintiff produced as witnesses J. M. Hollingsworth, W. C. Vance, N. B. Murff, and John R. Jones, who all being duly sworn and put on the stand, plaintiff's counsel offered to prove by the three first-named witnesses the market or cash value of certain alluvial lands in the parish of Bosier and the assessed value of the same as made by the tax-assessors of said parish, and by the said witness, Jno. R. Jones, the market or cash value of certain saw-mill property owned by him in the parish of Natchitoches and the asssessed value of the same, and by all of said four witnesses the relative assessment of property of like nature in

the parish of Caddo as compared with said assessments in the parishes of Bosier and Natchitoches, La.

That thereupon defendants, through their counsel, then and there objected to the admissibility of said testimony of said witnesses
26 on the ground that the facts sought to be proven by said witnesses are not alleged in plaintiff's petition & because said allegations are limited to assessments in the parish of Caddo for the year 1889.

Which objections were then and there overruled by the court for the following reasons, viz:

The assessor, Lindsay, in assessing the parish and State of Louisiana, was acting under State laws, as well as under police-jury ordinances. I permitted plaintiff to show by such witnesses the assessments made elsewhere in the State, because plaintiff's complaint is that he was taxed in violation of the State constitution, which provides and requires that the tax shall be equal and uniform throughout the territorial limits of the State.

To which ruling the defendants, by their counsel, did then and there, in open court and while the jury was at bar, except as erroneous and to their prejudice and reserved the right to file a bill of exceptions to the same.

In testimony whereof defendants pray that this their bill of exceptions be signed in open court, filed, and made a part of the record of this cause, and it was so ordered and done this 6th day of March, 1891.

ALECK BOARMAN, *Judge.*

27 Endorsed: No. 151. U. S. circuit court, western dist. of La. First National Bank *vs.* R. H. Lindsay, assessor, *et al.* Defendants' 2sd bill of exceptions. Filed March 11th, 1891. J. B. Beattie, clerk.

Defendants' 3rd Bill of Exception.

U. S. Circuit Court, Western District of Louisiana.

FIRST NATIONAL BANK
vs.
R. H. LINDSAY, Assessor, *et al.* } No. 151.

Be it remembered that on the trial of the above-entitled suit before the jury the plaintiff, having offered in evidence the assessment-rolls for the year 1889 in and for the parish of Caddo, State of La., then produced F. A. Leonard and other witnesses, who having been duly sworn and put upon the stand, said plaintiff offered to prove by said witnesses that sundry persons, residents of the parish of Caddo in the year 1889, owned judgments, mortgage
28 notes, rights, credits, and money which were not listed and assessed for taxation by the assessors of said parish for said year 1889, as shown by said rolls.

To the admissibility and competency of which testimony defendants, through their counsel, did then and there object on the

grounds & for the reason that under the State revenue act of 1888 & the laws of the State of Louisiana such omissions, whether intentional or not, do not warrant in law either the cancellation or reduction of the plaintiff's assessment, as prayed for in his petition, and that said revenue act does not authorize an appeal to the courts in such cases, but provides a specific legal remedy by making the assessors & the sureties on their bonds responsible for all the taxes due on the property that may be wrongfully or intentionally omitted by such assessors.

Which objections were then and there overruled by the court and said testimony was admitted & went to the jury for the following reasons, viz:

The evidence seemed to me to be relivant and admissable under the pleadings and theory of the plaintiff's case; the jury were entitled to hear if for what it was worth.

29 That then and there defendants, through their counsel, in open court & while the jury was at the bar, excepted to the said ruling of the court as erroneous & to their prejudice, and reserved the right to take & file a bill of exceptions to the same; which said bill they now present to the court and pray that it be signed & made a part of the record of this cause, and it was so done as ordered this 5 day of March, 1891.

ALECK BOARMAN, *Judge.*

Endorsed: No. 151. U. S. circuit court, western dist. La. First National Bank *vs.* R. H. Lindsay, assessor, *et al.* Defendants' 3rd bill of exception. Filed March 11th, 1891. J. B. Beattie, clerk.

30 *Defendants' 4th Bill of Exceptions.*

U. S. Circuit Court, Western Dist. La.

FIRST NATIONAL BANK *vs.* R. H. LINDSAY *et al.* } No. 151.

Be it remembered that on the trial of this case the presiding judge, in the course of his charge to the jury, charged as follows: The undisputed evidence and testimony not objected to shows that about the date of the assessment complained of the plaintiff-bank's moneyed capital was invested in U. S. & State bonds in some amount; which amount and date you must find for yourselves. The jury will deduct such amount from the moneyed capital of the bank. If you find any such bonds were held by the bank at the time of the assessment, you will deduct from the bank's moneyed capital such sum as you find the bank held in such bonds, and then fix the assessable value of the shares for taxing purposes.

To which charge of the court the defendant'- counsel did then and there, in open court and while the jury was at the bar, except as erroneous and to the prejudice of said defendant and reserves the right to file a bill of exceptions to the same.

In testimony whereof counsel for defendants in due time,
31 to wit, at motion hour on the 10th day of March, 1891, presented this bill of exceptions and prayed the same be signed, filed, and made a part of the records of this suit, and it was so done.

The court charged the jury that some evidence was offered and admitted without objection by plaintiff to show that at or about the time of the assessment of 1889 there was in the moneyed capital of the bank some amount or sum of United States & State bonds. They must ascertain from the evidence the amount of such bonds so held and the time they were so held by the bank in its moneyed capital, and, the jury having ascertained the said amounts held in such bonds, and that such amount was so held by the bank at the time of the assessment, will, in deciding what the shares in said bank are worth for assessable purposes, deduct or take from the moneyed capital of the bank the sum or amount of such funds as may have been in the bank's moneyed capital at the time of said assessment, and, after deducting said sum or amount, fix by their verdict the value for taxation of the shares in said bank.

The court so charged in relation to such said valuation be-
32 cause, taking the two acts—one of Congress, No. 5219, and the other the act of this State in 1888—providing for the assessment and collection of taxes, and applying the court's view or interpretation of said laws to evidence, not disputed, showing that some large amounts of U. S. & State bonds were in the bulk of the bank's moneyed capital, and evidence of the same kind showing that large amounts of moneyed capital, consisting of U. S. and State bonds and other rights and credits of individuals, of corporations, and of private banks in which moneyed capital is not held in shares in this parish and within other parishes in the State, were not listed and assessed for parish, city, or State taxation, the court believes that under the law and such undisputed facts that an unlawful discrimination was and is made against the plaintiff national bank and its shareholders, and the plaintiff, in the interest of the bank's shareholders, is entitled to relief to the extent of deducting such bonds, national and State, as were included in the bulk of the bank's moneyed capital at the time of the assessment.

33 The jury, after deducting said sums, will by their verdict fix the assessable value of the shares as they may find under the evidence and laws as charged.

ALECK BOARMAN, *Judge.*

Endorsed: No. 151. U. S. circuit court, western dist. of La. First National Bank *vs.* R. H. Lindsay, assessor, *et al.* Defendants' bill of exceptions No. 4. Filed March 11th, 1891. J. B. Beattie, clerk.

Plaintiff's Bill of Exceptions.

FIRST NATIONAL BANK
vs.
LINDSAY, Assessor, *et al.*

Be it remembered that on trial of said cause and before the court had charged the jury counsel*l* for pl'ff asked the court to charge as follows:

It appearing by undisputed evidence that the police jury
34 of Caddo parish at a meeting of that body sitting as a board of review, held July 1st, 1889, adopted on that date following resolution or ordinance, viz: "That the property in the parish be assessed at two-thirds of its cash value unless deemed advisable by the jury to assess in some instances at the full value."

And it appearing by undisputed evidence of R. T. Cole that he was a member of the police jury in years 1884, 1885, & 1886, and that during those years there was no assessment made of rights & credits, bills receivable, or mortgage notes; that the fact was known to and discussed among the members of the police jury, who, by an understanding among themselves, took no action with regard to such omission.

And it further appearing that by undisputed evidence *that* in the year 1889 the assessment officers knowingly omitted to place on assessment-roll in controversy rights and credits, bills & notes, aggregating in amount over 500,000 subject to taxation, which, as a result of such omission, was exempted from taxation.

And, further considering the law governing these undis-
35 puted facts, the assessment complained of is null and void & the jury should so find and find for the plaintiff for the entire relief claimed.

Which charge the court declined to give.

Such evidence was shown as stated without contradiction, but the court refused to give the charge.

To which refusal to charge as requested pl'ff, in due time & while the jury was at the bar, excepted & tendered this bill of exceptions, which was then & there in open court signed & made of record.

ALECK BOARMAN, *Judge.*

Endorsed: No. 151. U. S. circuit court, west. dist. of La. First National Bank *vs.* R. H. Lindsay, assessor, *et al.* Pl'ff's bill of exceptions. Filed March 14th, 1891. J. B. Beattie, clerk.

36 *Motion for New Trial.*

U. S. Circuit Court, Western Dist. of La.

FIRST NATIONAL BANK
vs.
R. H. LINDSAY, Assessor, *et al.* } No. 151.

Now come defendants in the above-entitled suit and moves the court for a new trial of the above-entitled suit on the ground that

the verdict of the jury is contrary to the law & the evidence to the prejudice and damage of said defendants.

J. H. SHEPHERD,
District Att'y for 1st Judicial Dist. of La.
A. D. LAND, *City Att'y.*

Endorsed: No. 151. U. S. circuit court, western dist. La. First National Bank *vs.* R. H. Lindsay, assessor, *et al.* Motion for a new trial. Filed March 14th, 1891. J. B. Beattie, clerk.

37 *Judgment.*

U. S. Circuit Court, Western Dist. of La.

FIRST NATIONAL BANK
vs.
R. H. LINDSAY, Assessor, *et al.* } No. 151.

In this case, by reason of the law and the evidence and the verdict of the jury being in favor of the plaintiff, The First National Bank of Shreveport, it is ordered, adjudged, and decreed that there be judgment in favor of said bank against the State of Louisiana reducing the assessment on each share of the capital stock of said bank, made against its several stockholders, as set forth in petition, for the year 1889, from eighty dollars a share to twenty-three $\frac{50}{100}$ dollars a share, said amount of twenty-three $\frac{50}{100}$ dollars being (according to the rate of assessing all property at two-thirds of its cash value adopted by and governing the assessing officers of the parish of Caddo for and during the year 1889 in making the assessment of said year) equal to $\frac{2}{3}$ of the amount found by the jury to be the full assessable value of each share and reducing the aggregate assessment of the entire 2,000 shares of the capital stock of said bank on said assessment-roll or tax-roll of 1889 from one hundred and
38 sixty thousand to forty-seven thousand dollars; & it is further ordered & decreed that plaintiff have judgment for costs, to be taxed; and it is further ordered and decreed that there be judgment to the same effect against the parish of Caddo and against the police jury of said parish; and it is further ordered and decreed that there be judgment to the same effect in favor of said bank and against the city of Shreveport; and it is further ordered and decreed that there be judgment against the defendant R. H. Lindsay to the same effect; and it is further ordered and decreed that plaintiff have and recover from the defendants *in solido* costs, to be taxed.

Done, read, and signed in open court on this the 14th day of March, A. D. 1891.

ALECK BOARMAN, *Judge.*

Endorsed: No. 151. First National Bank *vs.* R. H. Lindsay, assessor, *et. al.* Judgment. Filed March 14th, 1891. J. B. Beattie, clerk.

39 *Petition for Writ of Error.*

UNITED STATES OF AMERICA,
Western District of Louisiana.

To the honorable justice- of the Supreme Court of the United States:

And now comes R. H. Lindsay, assessor of the parish of Caddo, State of La., and the police jury of said parish and the city of Shreveport, State of La., by J. H. Shepherd and A. D. Land, their attorneys, and complain that in the records and proceedings and also in the rendition of judgment in a suit between The First National Bank, plaintiff, and the said Lindsay, assessor; the said police jury, and the said City of Shreveport, defendants, tried in the circuit court of the United States for said western district of La. at the February term thereof, A. D. 1891, and in which judgment was rendered against them on the — day of March, A. D. 1891, manifest error hath intervened, to the great damage of the said defendants.

Wherefore they pray for the allowance of a writ of error and such other process as may cause the same to be corrected by the Supreme Court aforesaid.

J. H. SHEPHERD,
A. D. LAND, *Att'ys.*

Allowed:

—— ——.

40 Endorsed: No. 151. U. S. circuit court, western dist. La. First National Bank *vs.* R. H. Lindsay, assessor, *et al.* Petition for writ of error. Filed March 14th, 1891. J. B. Beattie, clerk.

Objections to Applications for Writ of Error.

U. S. Circuit Court, Western Dist. La.

FIRST NATIONAL BANK
vs.
R. H. LINDSAY, Assessor, *et al.*

Plaintiff moves that the application of defendants The State of Louisiana, The Parish of Caddo, and The City of Shreveport for a writ of error to the Supreme Court from the judgment lately rendered by this court be disallowed & rejected for the reason that the amount in dispute between plaintiff and each of said defendants is less than five thousand dollars; the controversy between plaintiffs & each of said defendants being a separate and distinct contro-

41 versy.

For the further reason that the entire amount in dispute between plaintiff and all of said defendants is less than five thousand dollars.

And for the further reason that under the rule governing assessment for taxation of property in the parish of Caddo for the year 1889 such property could not be assessed for more than two-thirds of its cash value, and the amount in dispute in this case is much less than five thousand dollars.

A. H. LEONARD,
Att'y for Pl'ff.

Endorsed: No. 151. First National Bank *vs.* R. H. Lindsay, assessor, *et al.* Objections to application for writ of error. Filed March 14th, 1891. J. B. Beattie, clerk.

42 *Petition and Order for Appeal.*

U. S. Circuit Court, 5th Circuit, Western District of Louisiana.

THE FIRST NATIONAL BANK OF SHREVEPORT
vs.
R. H. LINDSAY *et als.* } No. 151.

To the Hon. Don A. Pardee, circuit judge of said court:

The petition of the defendants in the above-entitled suit respectfully represents—

That, as they are advised & believe, there is error to their prejudice in the final decree rendered in this cause, which was signed on the 14th March, 1891.

That the matter in dispute in this cause & adjudicated by the said decree exceeds the sum or value of five thousand dollars, exclusive of costs, and there has been and is a question in the cause involving the jurisdiction of the court, and your petitioners are entitled to have the same re-examined in the Supreme Court of the United States according to law by appeal, & to have the said appeal operate as a supersedeas upon proper security filed according to law.

Wherefore petitioners, said defendants in said judgment, to wit, Robert H. Lindsay, assessor of the State of Louisiana for
43 the parish of Caddo, and the said State of Louisiana and The Parish & Police Jury of the Parish of Caddo & The City of Shreveport, pray that said appeal be allowed of said cause, and citation signed & bond fixed & approved according to law, for a supersedeas, and for general relief.

A. D. LAND,
J. H. SHEPHERD,
W. W. HOWE,
Att'y- & Solis. for Defendants.

Let an appeal be granted as prayed for and according to law to the Supreme Court of the United States, returnable within thirty days, to wit, on the 23rd day of April, 1891, and let said appeal

operate as a supersedeas on the appellants — surety, according to law, in the sum of five hundred dollars.

DON A. PARDEE,
Circuit Judge.

March 25th, 1891.

Endorsed: No. 151. United States circuit court, western dist. of La. First National Bank *vs.* R. H. Lindsay, assessor, *et al.* Petition and order for appeal. Filed March 28th, 1891. J. B. Beattie, clerk.

44 *Bond on Appeal.*

U. S. Circuit Court, Western District of Louisiana.

THE FIRST NATIONAL BANK OF SHREVEPORT
vs.
R. H. LINDSAY *et al.* } No. 151.

Know all men by these presents that we, Robert H. Lindsay, assessor in and for the parish of Caddo, State of Louisiana; the State of Louisiana, the police jury of the parish of Caddo, and the city of Shreveport, as principles, and Henry Gardes, of New Orleans, La., as security, are held and firmly bound unto the First National Bank of the City of Shreveport, La., in the sum of five hundred dollars, lawful money of the United States, to be paid to the said obligee, its successors and assigns; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, administrators, and successors, *in solido* and firmly by these presents.

Sealed with our seals and dated the 25 day of March, A. D. 1891.

Whereas the above-bounden principle obligors have prayed for and obtained an appeal to the honorable the Supreme Court of the United States to reverse the judgment or decree rendered between said parties in the suit entitled First National Bank *vs.* R. H. Lindsay, assessor, *et als.*, No. 151, by the circuit court of the
45 United States, fifth circuit, for the western district of Louisiana, which final decree was signed March 14th, 1891:

Now, therefore, the condition of this obligation is such that if the above-named appellants shall prosecute their said appeal to effect and answer all costs and damages if they should fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

J. H. SHEPHERD,
District Attorney, for Assessor, Police Jury, State of Louisiana.
A. D. LAND,
Att'y for City of Shreveport.
H. GARDES. [L. S.]

Bond accepted M'ch 26th, 1891.

DON A. PARDEE,
Circuit Judge.

UNITED STATES OF AMERICA,
State of Louisiana.

Henry Gardes, being duly sworn, deposes and says that he resides in the city of New Orleans, State of Louisiana; that he signed the foregoing bond and is well worth the sum of one thousand dollars over and above all his debts and liabilities and property exempt from execution.

HENRY GARDES.

[SEAL.] Sworn to and subscribed before me this 25th day of March, 1891.

PAUL E. THEARD, *Not. Pub.*

46 Endorsed: No. 151. United States circuit court, western district of Louisiana. First National Bank *vs.* R. H. Lindsay, assessor, *et al.* Bond of appeal. Filed March 28th, 1891. J. B. Beattie, clerk.

Petition and Order for Writ of Error.

U. S. Circuit Court, 5th Circuit, Western District of Louisiana.

THE FIRST NATIONAL BANK OF SHREVEPORT
vs.
R. H. LINDSAY *et als.*

To the Hon. Don A. Pardee, circuit judge of said court:

The petition of the defendants in the above-entitled suit respectfully represents that, as they are advised & believe, the*ir* is error to their prejudice in the judgment rendered in this case, which was signed on the 14th March, 1891.

That the matter in dispute in this cause & adjudicated by
47 the said judgment exceeds the sum or value of five thousand dollars, exclusive of costs, and there has been and is a question in the cause involving the jurisdiction of the court, and your petitioners are entitled to have the same re-examined in the Supreme Court of the United States according to law by writ of error and to have the said writ of error operate as a supersedeas upon proper security filed according to law.

Wherefore petitioners, said defendants in said judgment, to wit: Robert H. Lindsay, assessor of the State of Louisiana for the parish of Caddo, and the said State of Louisiana and The Parish & Police Jury of the Parish of Caddo and the City of Shreveport, pray that said writ of error be allowed and citation signed & bond fixed & approved according to law, for a supersedeas, and for general relief.

A. D. LAND.
J. HENRY SHEPHERD, *Att'y.*
W. W. HOWE, *Of Counsel.*

Let a writ of error be granted, as prayed for and according to law, returnable to the Supreme Court of the United States within thirty days, to wit, the 24th day of April, 1891, and let same writ operate

as a supersedeas on the plaintiff in error furnishing security, according to law, in the sum of five hundred dollars.

March 25th, 1891. DON A. PARDEE,
Circuit Judge.

48 Endorsed: No. 151. United States circuit court, western district of La. 1st National Bank *vs.* R. H. Lindsay, assessor, *et al.* Petition & order for writ of error. Filed March 28th, 1891. J. B. Beattie, clerk.

Bond on Writ of Error.

Supreme Court of the United States.

R. H. LINDSAY, Assessor, *et als.*, Plaintiffs in Error,
vs.
FIRST NATIONAL BANK, Defendants in Error.

Know all men by these presents that we, Robert H. Lindsay, assessor in and for the parish of Caddo, State of Louisiana; the Police Jury of said parish of Caddo, herein represented by its president, James M. Foster, and the City of Shreveport, State of Louisiana, herein represented by Richard T. Vinson, mayor, as principals, and Thomas B. Chase, of said city and parish, as surety, are
49 held and firmly bound unto the First National Bank of the City of Shreveport, La., in the sum of five hundred dollars, to be paid to the said First National bank, its successors or assigns; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated this 25th day of March, A. D. 1891.

Whereas the above-named Robert H. Lindsay, assessor, &c, for the State of Louisiana, and said State of Louisiana & the said Police Jury of the Parish of Caddo and the said City of Shreveport, La., have prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment rendered between said parties in the suit entitled First National Bank *vs.* R. H. Lindsay, assessor, *et als.*, No. 151, by the circuit court of the United States, fifth circuit, for the western district of Louisiana:

Now, therefore, the condition of this obligation is such that if the above-named R. H. Lindsay, assessor, &c., Police Jury of Caddo Parish, and City of Shreveport shall prosecute their said writ of error to effect and answer all costs and damages if they
50 should fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

R. H. LINDSAY, *Assessor.*
POLICE JURY, PARISH OF CADDO,
Per J. M. FOSTER, *Pres'd't.*
CITY — SHREVEPORT,
By R. T. VINSEN, *Mayor.*
THOS. B. CHASE.

Bond accepted.
DON A. PARDEE.
Circuit Judge.

UNITED STATES OF AMERICA,
State of Louisiana.

Thomas B. Chase, being duly sworn, deposes and says that he resides in the city of Shreveport, State of Louisiana; that he signed the foregoing bond and is well worth the sum of one thousand dollars over and above all his debts and liabilities and property exempt from execution.

THOS. B. CHASE.

[SEAL.] Sworn to and subscribed before me this Mar. 13th, 1891.

W. P. FORD,
Notary Public.

Endorsed: In Supreme Court of the United States. In error to United States circuit court, western district of La. No. 151. R. H. Lindsay, assessor, *et als*, plaintiffs in error, *vs.* First National Bank of Shreveport, La., defendant in error. Bond on writ of error. Filed March 28th, 1891. J. B. Beattie, clerk.

51 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit and holding sessions for the western district of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between The First National Bank of Shreveport, La., plaintiff, and R. H. Lindsay, assessor of the parish of Caddo, La.; The State of Louisiana, The Police Jury of said Parish of Caddo and said Parish, and The City of Shreveport, La., defendants, No. 151, a manifest error hath happened, to the great damage of the said R. H. Lindsay, assessor, &c.; The State of Louisiana, the said Police Jury of the Parish of Caddo, State of La., and said Parish, and the said City of Shreveport, defendants aforesaid, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 23d April next, A. D. 1891, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court of the United States, this 25th day of March,

in the year of our Lord one thousand eight hundred and ninety-one.

J. B. BEATTIE,
Clerk of the United States Circuit Court for the Western District of Louisiana.

Allowed:
DON A. PARDEE,
Circuit Judge.

52 [Endorsed:] In Supreme Court of the United States. In error to United States circuit court, western district of Louisiana. No. 151. R. H. Lindsay, assessor, *et als.*, pl'ffs in error, *versus* First National Bank, def't in error. Writ of error.

53 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Western District of Louisiana.

The President of the United States to the First National Bank of Shreveport, La., Edward Jacobs, president, Greeting:

You are hereby cited and admonished to appear at a Supreme Court of the United States, to be holden at the city of Washington on the 23d day of April, 1891, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and the western district of Louisiana, wherein The First National Bank is plaintiff and R. H. Lindsay, assessor, &c.; The State of Louisiana, The Police Jury of Caddo Parish, La., and said Parish, and The City of Shreveport, La., are defendants (plaintiffs in error), to show cause, if any there be, why the judgment rendered against the said defendants (plaintiffs in error), as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 25th day of March, in the year of our Lord one thousand eight hundred and ninety-one.

DON A. PARDEE, *Judge.*

54 [Endorsed:] In Supreme Court of the United States. In error to United States circuit court, western district of Louisiana. No. 151. R. H. Lindsay, assessor, *et al.*, pl'ffs in error, *vs.* First National Bank, def't in error. Citation of appeal.

Marshal's Return.

Received the within citation of appeal in office on the 30th day of March, one thousand eight hundred & ninety-one, and on the same day, month, and year I make oath that I delivered a true copy of the within citation to Ed. Jacobs, Esq., in person, president of the First National bank, at Shreveport, Louisiana, in the case of The First National Bank *versus* R. H. Lindsay, assessor, *et als.*, number 151 on the docket of the United States circuit court, western district of Louisiana, by handing the same to him

in person at his office, in the city of Shreveport, Louisiana, at 3 o'clock p. m.

A. H. BERNSTEIN,
U. S. Deputy Marshal.

Sworn to and subscribed before me this the 30th day of March, 1891.

J. B. BEATTIE,
Clerk U.S. Circuit Court, W. Dist. La.

55 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Western District of Louisiana.

The President of the United States to the First National Bank of Shreveport, La., Edward Jacobs, president, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the 23d April, 1891, next, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and western district of Louisiana, wherein The First National Bank of Shreveport is plaintiff and appellee and R. H. Lindsay, assessor, &c.; The State of Louisiana, The Police Jury of Caddo Parish, Louisiana, and said Parish and The City of Shreveport, Louisiana, are defendants and appellants, to show cause, if any there be, why the judgment or decree rendered against the said appellants, defendants in cause, as in said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 25 day of March, in the year of our Lord one thousand eight hundred and ninety-one.

DON A. PARDEE, *Judge.*

56 [Endorsed:] United States circuit court, western district of Louisiana. No. 151. First National Bank *vs.* R. H. Lindsay, assessor, *et al.* Citation.

Marshal's Return.

Rec'd the within citation, in office, at Shreveport, Louisiana, on the 30th day of March, A. D. 1891, one thousand eight hundred and ninety-one, and on the same day, month, and year I make oath that I delivered a true copy of the within citation to Ed. Jacobs, Esq., president of the First National bank, at Shreveport, Louisiana, in the case of The First National Bank *versus* R. H. Lindsay, assessor, *et als.*, number 151 on the docket of the United States circuit court, western district of Louisiana, by handing the same to him in person, at his office, in the city of Shreveport, Louisiana, at 3 o'clock p. m.

A. H. BERNSTEIN,
U. S. Dep'ty Marshal.

Sworn to and subscribed before me this the 30th day of M'ch, 1891.

J. B. BEATTIE,
Clerk U. S. Circuit Court, W. D. La.

57 UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Western District of Louisiana.

CLERK'S OFFICE.

I, J. B. Beattie, clerk of the circuit court of the United States for the fifth circuit and western district of Louisiana, do hereby certify that the foregoing 55 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had on the trial of the case of The First National Bank of Shreveport, La., *vs.* R. H. Lindsay, assessor, *et als.*, No. 151 of the docket of the said court.

Seal U. S. Circuit Court for the Western Dist. of La.

Witness my hand and the seal of said court, at the city of Shreveport, La., this 7th day of April, A. D. 1891.

J. B. BEATTIE, *Clerk.*

I, Aleck Boarman, United States judge for the western district of Louisiana, do certify that J. B. Beattie, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and western district of Louisiana, was at the time of signing said certificate and is now the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of Shreveport, La., in said district, this 7th day of April, A. D. 1891.

ALECK BOARMAN, *Judge.*

58 THE UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States to the judges of the circuit court of the United States for the western district of Louisiana, Greeting:

Whereas in a certain suit in said circuit court between The First National Bank of Shreveport, Louisiana, plaintiff, and R. H. Lindsay, assessor of the parish of Caddo; The Police Jury of said Parish of Caddo, and said Parish and The City of Shreveport, Louisiana, defendants, which suit was removed to the Supreme Court of the United States by virtue of an appeal and a writ of error, agreeably to the act of Congress in such case made and provided, a diminution of the record and proceedings of said cause has been suggested, to wit—

"That in making the transcript the clerk of the United States circuit court for the western district of Louisiana, at Shreveport, erroneously omitted therefrom the affidavit of J. Henry Shepherd as to questions of jurisdiction and the amount in dispute:"

You therefore are hereby commanded that, searching the record and proceedings in said cause, you certify what omissions, to the extent above enumerated, you shall find to the said Supreme Court of the United States, so that you have the same, together with this writ, before the said Supreme Court forthwith.

Witness the Honorable Melville W. Fuller, Chief Justice
59 of the Supreme Court of the United States, the 9th day of June, A. D. 1891.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

60 United States Circuit Court, Fifth Circuit, Western District of Louisiana.

FIRST NATIONAL BANK OF SHREVEPORT
vs.
R. H. LINDSAY, Assessor, *et als.* } No. 151.

U. S. OF AMERICA, *ss:*

J. Henry Shepherd, being duly sworn, deposes and says that he is one of the counsel of the defendants and is district attorney of the first judicial district in and for the parish of Caddo, State of Louisiana, and that he is familiar with the facts of this case and with the pleadings and proceedings therein, and avers that the amount in dispute in the above-entitled cause, as disclosed by plaintiff's pleadings in his original petition, is the sum of six thousand and forty dollars and by plaintiff's supplemental petition the sum of six thousand seven hundred and sixty-eight dollars; that the amount as concluded by the judgment against the defendants is the full sum of four thousand two hundred and sixty-five $\frac{5}{100}$ dollars and the further sum of one thousand one hundred and ninety-three $\frac{20}{100}$ dollars interest, being the amount prescribed by the revenue act of the General Assembly of Louisiana as a penalty for the non-payment of taxes on Jan. 1st, 1890, the said act prescribing a penalty of 2 per cent. per month until paid, there being no tender made by plaintiffs in the foregoing suit as a sum claimed to be due by them, therefore making the total amount concluded by the judgment the full sum of five thousand four hundred and fifty-eight $\frac{25}{100}$ dollars as against defendants herein.

The assessment reduced is by law a unit and made by the State assessor alone, and there is no power in either the city or
61 parish to make any assessment whatever, and the effect of the judgment (the assessment being indivisible) is to benefit the plaintiffs in the full sum of $5,458.25 and reduce the public revenue in that sum.

The exception to the jurisdiction was raised, as appears by the record, and such want of jurisdiction appears by the face of the record.

J. HENRY SHEPHERD.

Sworn to and subscribed before me this 21st day of March, 1891.
E. R. HUNT, *Clerk.*

Endorsed: No. 151. United States circuit court, western district of Louisiana. First National Bank *vs.* R. H. Lindsay, assessor, *et al.* Affidavit of J. Henry Shepherd. Filed March 28th, 1891. J. B. Beattie, clerk.

CLERK'S OFFICE U. S. CIRCUIT COURT,
WESTERN DISTRICT OF LOUISIANA.

I hereby certify the foregoing affidavit to be a true and correct copy of the original on file and of record in my office.

Witness my hand and seal of office, at the city of Shreveport, La., this the 19th day of June, A. D. 1891.

[U. S. Circuit Court for the Western Dist. of La.]

J. B. BEATTIE, *Clerk.*

62 United States Circuit Court, Fifth Circuit, Western District of Louisiana.

FIRST NATIONAL BANK OF SHREVEPORT
vs.
R. H. LINDSAY, Assessor, *et als.* } No. 151.

Received the annexed writ of certiorari from the Supreme Court of the United States in the above entitled and numbered cause, and, in obedience to the same, I herewith return with said writ a duly certified copy of the original affidavit of J. Henry Shepherd, with the endorsement thereon, "Filed March 29th, 1891," which is the date upon which the petitions for appeal and writ of error were filed in the above entitled and numbered cause.

In faith whereof I have hereunto signed my name and affixed the seal of said court, at the city of Shreveport, Louisiana, this the 19th day of June, A. D. 1891.

[Seal U. S. Circuit Court for the Western District of La.]

J. B. BEATTIE, *Clerk.*

63 [Endorsed:] Supreme Court U. S., Oct'r term, 1891. No. 1118. R. H. Lindsay, assessor, &c., *et al.*, app'ts & pl'ffs in err., *vs.* The 1st National Bank of Shreveport, La., *et al.* Writ of certiorari & return.

[Stamped:] Office Supreme Court U. S. Filed Jun- 24, 1891. James H. McKenney, clerk.

[Endorsed:] No. 1118. United States cir. ct., western dist. La. First Nat. Bank of Shreveport *vs.* R. H. Lindsay, ass'r, *et al.* Writ of certioriari and return.

Endorsed on cover: Case No. 14,585. W. Louisiana C. C. U. S. No. 132. R. H. Lindsay, assessor of the parish of Caddo, Louisiana; The Police Jury of said Parish and The City of Shreveport, Louisiana, appellants & plaintiffs in error, *vs.* The First National Bank of Shreveport, Louisiana; Edward Jacobs, president. Filed April 20, 1891.

156.

DEC 7
JAMES H. MCK
CL

156-485

SUPREME COURT OF THE UNITED STATES.

October Term, 1891.

No. 1118.

LINDSAY ET AL.

versus

FIRST NATIONAL BANK OF SHREVEPORT.

A. H. LEONARD,

Of Counsel for First National Bank for purpose of this motion.

L. GRAHAM & SON, 99, 101, 103 GRAVIER ST., N. O.

SUPREME COURT OF THE UNITED STATES.

October Term, 1891.

No. 1118.

LINDSAY ET AL.

versus

FIRST NATIONAL BANK OF SHREVEPORT.

Now comes the First National Bank of Shreveport, appellee and defendant in error herein, and moves the court to dismiss the writs of error and the appeals in this case for want of jurisdiction, because the matter in dispute, exclusive of costs in said case, does not exceed the sum or value of $5000, even though the several matters in dispute between said bank and the several appellants and plaintiffs in error be considered together, and because the distinct judgments of the Circuit Court, to which said writs were directed, and from which said appeals were taken against the distinct parties before such court in the case in which said judgments were rendered can not be joined to give this court jurisdiction.

A. H. LEONARD,

Counsel for Bank for the purposes of this motion.

To.....

Please take notice that on the day of , A. D. 1891, the motion of which the foregoing is a copy will be submitted to the Supreme Court of the United States for the decision of the court thereon.

Annexed hereto is a copy of my brief and argument in support of said motion.

A. H. LEONARD,

Counsel for Bank for the Purposes of this Motion.

BRIEF AND ARGUMENT.

The amount in dispute in this case is less than $5000.

This is a suit instituted by the First National Bank of Shreveport, Louisiana, to test the correctness of the assessment of shares of its capital stock, assessed against the stockholders in the year 1889, by the assessing officers of the State of Louisiana for the parish of Caddo. Under the revenue laws of Louisiana in force in the year 1889, assessments of property for taxation were made by an assessor appointed by the State for each parish. On the assessment so made known as the tax list, taxes were levied by the State, by the Parish, and by any municipality existing in said Parish.

The City of Shreveport being in the parish of Caddo, the assessment or tax roll made by the assessor for that Parish was the common tax roll for the State, for the Parish and for the City, and on the property therein listed. The State, the Parish and the City each levied a separate and distinct tax, that of the State being 6 mills on the dollar of valuation, that of the Parish being 8 mills on the dollar of valuation, and that of the City of Shreveport being 23¾ mills on the dollar of valuation.

Each share of stock in said bank was assessed at $80 a share, aggregating for the entire number of shares viz: 2000—the sum of $160,000.

On this assessment the tax levied by the State, viz: 6 mills, amounted to $960; the tax levied by the Parish, viz: 8 mills, amounted to $1280, and the tax levied by the City of Shreveport, viz: 23¾ mills, amounted to $3800. The interest of the State, that of the Parish, and that of the City of Shreveport is each separate and distinct, and separate and distinct judgments were rendered in court *a qua* against the State, against the Parish, and against the City of Shreveport.

The case is before this court on writs of error, sued out and appeals taken by the State, by the Parish of Caddo, and by the City of Shreveport, and involves three separate and distinct controversies; one between the bank and the State, one between the bank and the Parish of Caddo, and one between the bank and the City of Shreveport. The various amounts in dispute in the several controversies can not be aggregated for the purpose of giving this court jurisdiction. Parties can not join to give jurisdiction. The decree of the court *a qua* is not a joint decree. The liability of the bank to each of the defendants is separate and distinct, and in each case is less than $5000.

In *ex parte* Phœnix Insurance Co., 117 U. S. 367, 369, the court say: "The rule is well settled that distinct decrees against distinct parties on distinct causes of action *or on a single cause of action* in which there are distinct liabilities can not be joined to give this court jurisdiction." See Gibson vs. Shufeldt, 122 U. S. 27.

Counsel for defendants below assert that the assessment in question is a "unit" and in support of this assertion point triumphantly to an affidavit made by "a unit" of them, in which he deposes that said assessment is "a unit."

Exactly what is meant by this phrase I am at a loss to imagine. There are units of number, of force of weight, etc., etc., but I have never before heard of "a unit" of assessment. Assuming that counsel mean to say there is a single assessment roll for the Parish of Caddo, and conceding the fact so to be, it does not follow that the separate and distinct taxes levied on that assessment by separate and distinct authorities, can be joined to give this court jurisdiction, on the contrary the cases cited established conclusively the rule, that the distinct decrees against the distinct parties to this cause can not be joined to give this court jurisdiction.

But even though they could be joined for that purpose the sum or value of the matter in dispute is still less than $5000.

The jurisdiction of this court depends on the sum or value in dispute between the parties as the case stands upon writ of error or appeal *in this court*, not on that which was in dispute in the Circuit Court.

Gordon vs. Ogden, 3 Pet. 33.

The matter originally in dispute in the Circuit Court was whether the assessment against the shares should stand as fixed by the assessing officers, and as a result thereof the bank should pay separately to the State, to the Parish and to the City several distinct sums aggregating $6040.

The judgment of the Circuit Court, however, fixes the assessable value of the shares at $23.50 a share, aggregating $47,000, and as a result thereof the bank must pay separately to the State, to the Parish and to the City several distinct sums, aggregating $1774.25. The bank accepts the judgment of the Circuit Court and admits its liability to the extent of $1774.25.

The State, the Parish and the City insist that the several distinct amounts due to each aggregates $6040, but the bank accepting the judgment of the Circuit Court admits its liability to said parties separately, in amounts aggregating $1774.25. Therefore, the matter in dispute in this court is whether or not the bank is liable to these separate parties in separate amounts, aggregating the difference between $6040 and $1774.25, viz. $4265.75. It follows that the matter in dispute in this court is less than $5000.

In the Hilton vs. Dickinson, 108 U. S. 174, this court say: "When a defendant brings a case here the judg-
"ment or decree against him governs our jurisdiction un-
"less he has asked for affirmative relief which was denied
"and this because as to him jurisdiction depended on the

" matter in dispute here. If the original demand against " him was for more than our jurisdictional limit and the " recovery for less, the record would show that he had " been successful below as to a part of his claim, and " that his object in bringing the case here was not to " secure what he had already got, but to get more. As " to him, therefore, the established rule is that unless the " additional amount asked for is as much as our jurisdic- " tion requires, we can not review the case. We are " unable to see any difference in principle between the " position of a plaintiff and that of the defendant as to " such a case, the plaintiff sues for as much or more than " the sum required to give us jurisdiction and recovers " less. He does not any more than a defendant bring a " case here to secure what he has already got, but to get " more. If we take a case for him when the additional " amount he asks to recover is less than we can consider, " he has an advantage over his antagonist. Such a result " ought to be avoided, and it may be by holding as we " do, that as to both parties the matter in dispute on " which our jurisdiction depends is the matter in dis- " pute between the parties as the case stands upon the " writ of error or appeal, that is to say as it stands in this " court.

" Under this rule we have jurisdiction of a writ of error " or appeal by a plaintiff below, when he sues for as " much or more than our jurisdiction requires, and " recovers nothing or recovers only a sum which being " deducted from the amount or value sued for leaves a " sum equal to or more than our jurisdictional limit for " which he failed to get a judgment or decree.

" And we have jurisdiction of a writ of error or appeal " by a defendant below when the recovery against him is " as much in amount or value as is required to bring a " case here—and when having pleaded a set off or counter

" claim for enought to give us jurisdiction, he is defeated
" upon his plea altogether or recovers only an amount or
" value which being deducted from his claim as pleaded
" leaves enough to give us jurisdiction, which has not
" been allowed."

Following this rule in Dows et al vs. Johnson, 110 U. S. 223, this court, after stating that it was claimed in Circuit Court that Johnson was liable to Dows & Co. for the unlawful conversion of 10,000 bushels of corn, the value of which did not exceed $6,000, and that with interest added the most that could have been recovered was $6360, say "a judgment was in fact rendered for $2430. The matter in dispute in this court is the difference between these two sums, viz., $3930." The motion to dismiss was, therefore, sustained.

In the case at bar, the State, the Parish, and the City do not bring the case here to secure what they have already got, but to get more—the additional amount they seek to recover is less than $5000, therefore, this court is without jurisdiction.

The learned counsel seem to know that such is the law, for they strenuously contend that to the matter in dispute, as shown by the record interest at the rate of 2 per cent. a month, from December 31, A. D., 1889, up to date of judgment, must be added.

This contention is based on the assumption made by counsel that the revenue laws of Louisiana provide that all taxes shall be paid on or before the 31st of December of each and every year, and as a penalty for nonpayment, provide further that all taxes unpaid on that date shall bear interest therefrom at the rate of 2 per cent. a month. The proposition so contended for is erroneous for two reasons.

1. This court has repeatedly said, "our jurisdiction
" depends on the matter which is *directly* in dispute

" in the particular cause in which the judgment or " decree sought to be reviewed has been rendered, and " *we are not permitted* for the purpose of determining its " sum or value to estimate its effect in a subsequent suit " between the same or other parties."

Bruce et al. vs. Manchester & Keene R. R. Co., 117 U. S. 514.

The matter directly in dispute in this cause is what, if any, was the assessable value of shares of stock of the bank in the year 1889. The judgment sought to be reviewed, determines such assessable value, only that and nothing more.

The amount of taxes which can be legally exacted under that judgment, and whether or not such tax bears interest are open questions, which the court *a qua* was not called on to decide, and which your honors (if I may be permitted to quote your own words) " are not permitted to consider " in determining your jurisdiction.

2. But the contention that the bank or its stockholders are liable for any interest or any tax is so utterly unfounded that it is difficult to refrain from pronouncing it simply absurd.

A valid and *final* assessment is an indispensable preliminary requisite to any tax. In the absence of such assessment there is no tax, exigible or due, therefore no penalty or interest can be exacted from the tax payer.

These propositions if not self-evident, at least do not require argument. Now, so far as the holders of shares of stock in the bank are concerned, there was no assessment of their shares for taxation until it became final as a result of the judgment rendered in court *a qua*. Until the date of that judgment there was no assessment under which any tax could be exacted from said shareholders. Until the date of that judgment no tax was due by said shareholders or the bank; therefore the shareholders

and the bank were not delinquent, and are not liable for any penalty or interest prior to the date of such judgment.

The Revenue law of Louisiana in force during year 1889 —see Appendix—provided for the appointment by the Governor of one Tax Assessor for each parish, and made it the duty of tax assessors to place upon assessment lists, furnished in blank to them by the State Auditor, all property subject to taxation, and to fill up the column for valuation with such valuation of each item ot property as he considers just. Such listing and estimation is required to be completed on or before the 1st of June ot each year, and immediately thereafter the assessors must by publication, or in the absence of a newspaper by posting on the door of the court house of the parish, give notice for the period of ten days that the listing of property has been completed and the estimated valuation made thereon, and that said list is in the office of the Assessor for inspection and correction for a term of twenty days beginning after the expiration of the ten days required for notice.

After the expiration of said twenty days the several assessors are required to lay the lists of property with their valuation thereof before the police juries of the several parishes appointed and constituted boards of reviewers for their respective parishes, and directed to convene for that purpose on the first Monday in July of each year.

Such boards of reviewers thereupon proceed at once to arbitrate and determine all questions between the assessors and property owners, and to examine and pass upon said lists of property and the estimation thereof, being invested with power to correct errors, to decrease valuation, and to increase same after notice to taxpayers. When the lists of property with valuation thereof have been passed upon by the board of reviewers, each tax

assessor fills out three tax rolls (furnished in blank by the State Auditor) from the said lists, and on or before the 1st of September deposits one tax roll in the office in which the mortgage records of the parish are kept; the second in the office of the tax collector or sheriff, and the third in the office of the State Auditor.

The decisions of the board of reviewers is final unless set aside in accordance with Article 203 of the State Constitution, which provides that "tax payers shall have the right of testing the correctness of their assessments before the courts of justice;" and when the tax roll is filed in which the mortgage records of the parish are kept, notice is thereby given that the taxes shown by such roll are due and collectible, *except as to those tax payers who avail themselves of the right guaranteed to them by the State Constitution*, and appeal to the courts of justice.

But as to those tax payers who resort to the courts, the assessment is not final, and no taxes are collectible from them.

The revenue law provides, in accordance with the Constitution, that all tax payers shall have the right of testing the correctness of their assessments before the courts of justice, in any procedure which the Constitution and laws may permit; but the action must be instituted on or before the 1st of November of the year in which assessment is made.

Such action is declared to be a "preference" suit to be tried as speedily as possible, without a jury, and in chambers if court is not in session. That is to say such action is a "summary proceeding."

The right being reserved by the Constitution and laws of Louisiana to each tax payer to test in courts of justice the correctness of the assessment, it follows that there is no assessment under which taxes are due by and collectible from one who has availed himself of this right until

the final decision of the suit by him instituted. It would be monstrous to hold that he has incurred a penalty as a result of such action on his part, or that he becomes delinquent and liable to a penalty in the event his suit is not finally determined prior to the 31st of December of the year in which it is brought.

When such suit is instituted it suspends the assessment and practically there is no assessment under which any tax is due or exigible until the final decision of this suit, consequently no amount of interest accrued prior to the date of the judgment of court *a qua*. This, it is respectfully submitted, disposes effectually of the contention of counsel that interest is to be considered in determining the jurisdiction of this court, and if interest is not considered, the sum or value of the matter in dispute is not sufficient to give this court jurisdiction.

In this connection I desire to state that learned counsel will doubtless direct the attention of the court to a paper interpolated in the record as a result of a peremptory order improvidently made, *ex parte* by Hon. Don. A. Pardee, Circuit Judge of the United States for the Fifth Circuit.

This cause originally instituted in the Circuit Court of the United States for the Western District of Louisiana, was tried before Hon. Aleck Boarman, Judge of that district, holding a session of the Circuit Court. The defendants during the session applied to him for a writ of error to this court which he properly refused to grant.

Thereafter the defendants below presented to Judge Pardee petitions for writs of error and appeal, which he improvidently granted.

Bonds for appeal and writs of error were given and approved, and citations issued which were served on the bank.

The clerk of court *a qua* at the request of counsel for

defendants below then made a transcript of the case, omitting as it was his duty to do the paper referred to which is an *ex parte* affidavit not annexed to or even referred to in any document or pleading belonging to the record. Counsel insisted that this paper should be copied by the clerk in the transcript, but on his refusal so to do took the transcript as he had made it and forwarded it to the clerk of this court to be filed with the records of this court.

Counsel then presented a petition to Judge Pardee, requesting him to order the clerk of the court *a qua* "to "furnish a supplemental transcript containing a duly certi- "fied copy of said affidavit, with date of filing, and such "other particulars as may set forth the facts." Thereupon, without notice to any one, Judge Pardee made a peremptory order, such as he was requested to make, bearing date April 20, 1891.

This action on the part of Judge Pardee, when it was incidentally brought to my knowledge, seemed to me improvident. "The affidavit," not being any part of the record, ought not to be in the transcript. Moreover, it is apparent on the face of the record that this is not a case in which value or sum of matters in dispute can be shown by affidavits. The record shows what the value is, and the value so shown can not be changed by affidavits. Why, then, did Judge Pardee, order the clerk to copy this affidavit in a supplemental transcript?

If, as a matter of fact, the transcript was defective, the defect can be remedied only by this court.

At the date of the order made by Judge Pardee this case was pending in this court. It was beyond the jurisdiction of the Circuit Judge. Why then did Judge Pardee assume a power exclusively vested in this court?

However, the matter is of no particular consequence; the affidavit does not belong in the record, and will not, I assume, be considered by this court.

If considered no effect can be given to it. It purports to be an *ex parte* affidavit, made by J. Henry Shepherd, Esq., of counsel for defendants below, in which he not only incorrectly states the law of Louisiana, but incontinently deposes that his erroneous statement is true. The law of foreign countries may in some instances be shown by the testimony of experts learned therein. With that exception, it is not usual to establish the law by *ex parte* affidavits. In this case my learned opponents say the law of Louisiana is thus and thus. See sworn statement of J. Henry Shepherd, Esq., Attorney and Counselor at Law, Solicitor in Chancery, Proctor in Admiralty and District Attorney of the State of Louisiana for the First Judicial District thereof.

This comes "in such a questionable shape" that I will question it. Mr. Shepherd undoubtedly gave his deposition in good faith; he doubtless believes that what he supposes to be law, is law—*dura lex* sometimes, *sed lex* always. Nevertheless, beyond the immediate circle of his admiring family, friends and associates, the opinions of Mr. Shepherd, supported though they be by his "corporal oath" can not be accepted as law. If his opinion were sound, which it is not, it would still be amusing to perceive that learned counsel considered it necessary to make, and that a more learned circuit judge conceived it necessary to consider, an affidavit, which, in the first place, professes to state the law, and, in the second place, purports to be the result of a mathematical calculation.

If mathematical problems could be solved by affidavits, Mr. Shepherd would be, perhaps, the greatest mathematician of this age. But if we attempt to solve such problems by the usual methods it will be found difficult to comprehend how Mr. Shepherd arrived at the conclusion (which he swears is true), that the amount at issue, as shown by original petition, is $6040, and that such amount

as shown by supplemental petition is $6748. The amount at issue under original petition, and that at issue under the supplemental petition, is exactly the same. In and by both petitions, plaintiff, below, claim that the assessment of shares at $80 a share is incorrect. The supplemental petition merely sets forth additional reasons why such assessment is incorrect.

As has been stated, the original counsel of defendants below applied to Judge Boarman for a writ of error to this court, which was refused because the sum or value of the matter in dispute is less than $5000.

Other eminent counsel being subsequentiy associated with them, applications were made to the circuit judge for writs or error and appeals, other eminent counsel being of opinion that this is a cause in equity and appealable without reference to the amount involved because it raises a question of jurisdiction.

This contention necessarily concedes that writs of error were improperly sued out and should be dismissed, and if it be unfounded the appeals should also be dismissed. It is unfounded. The Act of February 25, 1889, 25 U. S. Statutes, 693, does not apply to a cause like this. The record does not present any question involving the jurisdiction of the *circuit court*.

The plea filed in court *a qua* did not question the jurisdiction of that court. It merely raises the question whether that court shall hear and determine the cause as a case in equity, or as a suit at law.

"A question involving the jurisdiction of the court" under Act of Congress referred to is a question whether or not the case in which it is raised is one to which the judicial power of the Circuit Courts extends under the Constitution and under the Acts of Congress creating such courts. Now there can be no doubt that under the Constitution and by the Acts of Congress creating Circuit

Courts, the court *a qua* had jurisdiction of the case presented by plaintiff below. Whether such case is a suit at law or in equity is another question, but not "a question involving the jurisdiction of the court."

It follows that the case can not be brought to this court under Act, February 25, 1889.

But if we concede merely for the sake of the argument that this court has jurisdiction to determine whether this is a legal or an equitable action, if it be as it was held to be, by judge *a quo* a suit at law, his judgment can not be disturbed.

It certainly is a suit at law. It does not present any circumstances bringing it under some recognized head of equity jurisdiction. It does not call for any remedy purely equitable. It is not a case which must be brought in equity to prevent a multiplicity of suit.

It is simply an application to a law court to enforce by the ordinary processes of law an adequate remedy given by law.

In Dows vs. City of Chicago, 11 Wall. 108, the collection of a tax on shares in a national bank was resisted on the ground that the tax was not equal and uniform, and on several objections to the manner in which the tax lists were prepared and assessment made, the court say: "Assuming the tax to be illegal and void, we do not think "any ground is presented justifying the interposition of a "court of equity. There must be some special circumstances bringing the case under some recognized head of "equity jurisdiction. It must appear that the enforcement "of the tax would lead to a multiplicity of suits or produce "irreparable injury, or where the property is real estate, "throw a cloud upon the title of the complainant before the "aid of a court of equity can be invoked."

The court refer to a decision of the Court of Appeals

of New York, in which it was held that a court of equity will not entertain an action against an erroneous or illegal assessment except in certain specified cases, and in them only where the interference of a court of equity was necessary to arrest excessive litigation or to prevent irreparable injury or to remove a cloud on the title.

The court refer also to case Cook Co. vs. Chicago, Burlington & Quincy Railroad Company, in which it is held that a court of equity would never entertain a bill to restrain the collection of a tax except where the tax was unauthorized by law, or assessed on property not subject to taxation, and would not take jurisdiction in these excepted cases without special circumstances showing that the collection of the tax would be likely to produce irreparable injury or cause a multiplicity of suits.

Thereupon this court say: "Upon principle this must "be the case. The equitable powers of the court can "only be invoked by the presentation of a case of equi- "table cognizance."

In Hamurrenkle vs. Georgetown, 15 Wall. 548, this court say: "The sole ground of the present bill is the "illegality of the tax. A suit in equity will not lie on "this ground, there must exist in addition special cir- "cumstances bringing the case under some recognized "head of equity jurisdiction."

In State Railroad Tax Cases, 92 U. S. 575, this court held: "That neither illegality or irregularity in the pro- "ceedings, nor error or excess in the valuation, nor the "hardship or injustice of the law, nor any grievance which "can be remedied by a suit at law before or after the "payment of the tax will give a court of equity jurisdic- "tion."

The courts, State and National, have no general power of impeding or controlling the collection of taxes or re-

lieving the hardship incident to taxation (Cheatham vs. United States, 92 U. S. 89), therefore it can not be reasonably contended that this case is cognizable by a court of equity under its general powers.

If the decision of the board of reviewers as to assessment was final under the law of Louisiana, the case at bar would not lie in any court, but the law of Louisiana declares that such decision is not final as to any one who chooses to test the correctness of the assessment against him in the courts, and provides a simple and summary method by which courts shall practically make such assessment.

To quote from decision in Van Norden vs. Morton: "The remedy needs no formal chancery proceeding, and "is the most speedy and appropriate mode of obtaining "relief. It is a short, summary proceeding, which has "no element of equitable right or procedure." 99 U. S. 381.

The learned counsel for defendants below interposed in court *a qua* a plea to jurisdiction, in which this case is alleged to be a suit in equity, but no reasons are set forth in the plea, and none were stated in argument in support of the allegation.

I am at a loss to imagine how counsel arrived at the conclusion that this is a suit in equity, if they have arrived at such conclusion, which is doubtful as shown by the fact that the original counsel of defendants below applied first only for a writ of error, and in the second application asked for both writs of error and appeal. If this be a suit of equity, why apply for writs of error? But no matter what may be the present opinion of counsel. It is apparent that this case would not have been considered if instituted by a bill in chancery because it presents no circumstances bringing the case under any head of equity

jurisdiction, and because a full, adequate and complete remedy at law exists.

It follows that the appeals herein taken should also be dismissed. Respectfully submitted,

A. H. LEONARD,

Of Counsel for First National Bank for purposes of this motion.

APPENDIX.

Revenue Laws Louisiana in Force, A. D. 1889. Act 85, Session 1888—Acts 1888, p. 111.

SEC. 2. The Governor shall appoint one tax assessor for each parish in this State (except the parish of Orleans) who shall hold their office for the term of four years.

SEC. 6. It is made the duty of tax assessors throughout the State to place upon the assessment list all property subject to taxation.

SEC. 12. The Auditor of Public Accounts shall prepare and have printed and forward to the several assesors tax lists in the form provided in Section 16 of this Act.

SEC. 18.—The tax assessor shall fill up the column for valuation with such valuation of each item of property as he considers just.

SEC. 21.—Immediately after the listing and valuation of all real and personal property shall have been completed by the assessor, which shall in all cases be done on or before the 1st day of June in each and every year, the said assessor shall give notice by publication in some newspaper published in their respective parishes, and if there be no newspaper published therein, by posting on the court house door of the parish for the period of ten days, that the listing of the property has been completed, and the estimated valuation made thereon by the said assessor, in accordance with the law, and that the said list shall be exposed in the office of the said assessor for inspection and correction for a term of twenty days, beginning next after the ten days required for notice, as herein provided, shall have expired.

SEC. 22. That the police juries of the several parishes throughout the State be and are hereby appointed and

constituted boards of reviewers for their respective parishes.

SEC. 23. That the said board of reviewers shall meet on the first Monday in July of each and every year, and the several assessors shall lay before them all of the said lists of property, with the estimated actual cash value thereof, extended as listed and valued by the said assessors as aforesaid, together with the lists and valuations made under oath as aforesaid of those property owners who believe the assessor's valuation to be in excess of the actual cash value of the property therein enumerated, and the said board shall proceed at once to arbitrate upon the said lists of property and cash valuation, and their decision shall be final, unless set aside in accordance with Article 203 of the Constitution.

The said board shall then proceed to examine all the aforesaid lists of property submitted to them by said assessors, and should they find any property to have been illegally or wrongfully assessed in the listing or valuation thereof, it shall be their duty to correct same.

They shall also equalize the assessments of all properties of the like character and relative value within their respective parishes: provided, no valuation shall be increased unless tax payer be served with notice.

* * * * * * *

After having passed upon and determined the correctness of any list and the valuation thereof, the same shall became final *unless set aside or changed*, as provided by law.

SEC. 31. The Auditor shall furnish to each tax assessor three rolls, in such convenient form as to meet the requirements of this Act, and the assessor shall proceed to fill out the said tax rolls from the lists as soon as they are passed on by the board of reviewers, and he shall deposit one tax roll in the office in which the mortgage records of

the parish are kept, the second in the office of the tax collector of his district, or in the office of the sheriff, and the third in the office of the Auditor, before the first day of September of each year.

SEC. 35. In the suit of any tax payer or tax payers testing the correctness of his or their assessments before any court of justice, the decision of such court shall only affect the assessment of the person or persons in such suit.

SEC. 36. All suits relating to taxes or licenses shall be preference suits in all courts where pending, and shall be tried without a jury and as speedily as possible, and in chambers of court if not in session.

STATE CONSTITUTION.

ART. 203.—Taxations shall be equal and uniform throughout the territorial limits of the authority levying the tax, and all property shall be taxed in proportion to its value to be ascertained as directed by law, provided the assessment of all property shall never exceed the actual cash value thereof, and provided further that the tax-payers shall have the right of testing the correctness of their assessments before the courts of justice.

Revenue Act 1886, Acts 1886, p. 143, sec. 27. All tax-payers shall have the right to appear before the board of reviews on or before the 1st day of November of the year in which assessment is made, during the sessions of said boards, and be heard concerning the description of the property listed and the valuation of same as assessed, and they shall have the right of testing the correctness of their assessments before the courts of justice in any procedure which the Constitution and laws may permit, but the action to test such correctness shall be instituted on or before the 1st day of November of the year in which the assessment is made.

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SUPREME COURT OF THE UNITED STATES.

No. 1118 of October Term, 1891.

ROBERT H. LINDSAY ET AL.

versus

FIRST NATIONAL BANK OF SHREVEPORT.

On Motion to Dismiss Writ of Error and Appeal.

BRIEF IN OPPOSITION TO THE MOTION.

WILLIAM WIRT HOWE,
For Plaintiffs in Error and Appellants.

DECEMBER, 1891.

T. H. Thomason, Printer, 33 Natchez St.

SUPREME COURT OF THE UNITED STATES.

No. 1118 of October Term, 1891.

ROBERT H. LINDSAY ET AL.

versus

FIRST NATIONAL BANK OF SHREVEPORT.

On Motion to Dismiss Writ of Error and Appeal.

BRIEF IN OPPOSITION TO THE MOTION.

In National Bank vs. Insurance Co., 100 U. S. 43, it was said that such a motion as this would not be decided until the record is printed, and this record has not been printed.

But if the matter is to be considered, we call attention to the fact that the petition of the plaintiff in the lower court was filed on the law side of that court and the cause tried by a jury; that the prayer of the petition is for a decree which a court of law has no jurisdiction to make or enforce; that an exception to the jurisdiction, of which a copy is hereto annexed, was filed; that the petition "involves the construction or application of the Constitution of the United States;" and that by the petition "the constitution or law of a State is claimed to be in contravention of the Constitution of the United States."

See Circuit Court of Appeals Act of March 3d, 1891, Section 5, paragraphs 1, 4 and 6.

As the case was on the law side of the court, and yet the relief prayed was of an equitable character, it was deemed proper to take both a writ of error and an appeal.

It is respectfully submitted:

I.

All parties to the suit being citizens of Louisiana, it was necessary for the plaintiff below, in order to go into the U. S. Circuit Court, to set up a case arising under the Constitution and laws of the United States. Having done this, it must accept the legal results.

The petition, briefly stated, is an attack on an assessment of $160,000 for the year 1889, made by Lindsay, assessor, under the Revenue Act of Louisiana of 1888, being Act No. 85 of that year. It demands the annulment or rescission, or at the least, the reformation, of that assessment on the ground of error and illegality. It declares that taxes to the amount of $6,040 based on this assessment will be collected, "*unless prevented by decree of this Hon. Court.*" It avers that the provisions of the 27th Section of the said Act No. 85 of the General Assembly of Louisiana, of 1888, violate *the Constitution of the United States*, conflict with the underlying principles of free government and are forbidden by "The Law of the Land."

The prayer of the petition asks for a judgment or decree "de-
" claring said assessment null and void and *prohibiting the collec-*
" *tion of any tax* from petitioner or its stockholders; or, in
" the event the Court should not hold said assessment absolutely
" null, petitioner prays for a judgment reducing said assessment
" so as to make it equal and uniform with other asssessments,
" and striking therefrom the amount of property held by the

" Bank, exempted from taxation, as hereinbefore set forth, and " petitioner prays for all orders and decrees," etc.

Attention is directed also to the supplemental petition and to the judgment or decree.

It seems plain that the plaintiff below has made, in its pleadings, and for its own benefit, a case in which an appeal or writ of error lies direct from the Circuit Court to this Court, under the following paragraphs of the Act of March 3, 1891, respecting Circuit Courts of Appeal, which provide for such review:

"(4) In *any case* which involves the construction or *applica-* " *tion* of the Constitution of the United States."

"(6) In *any case* in which the Constitution or law of a State " *is claimed* to be in contravention of the Constitution of the " United States."

It has been held, as we understand, in the case In re Claasen, 140 U. S. 200, that the Act of March 3, 1891, went into immediate operation from and after that day. The decree or judgment in the case at bar was rendered thereafter.

It matters not then what is the amount in dispute. The right of review by this Court is clear.

II.

It is submitted, also, whether there is not a right of review by this Court, in this case, under the first paragraph of the 5th section of the same Act of March 3, 1891, which gives the right, direct, from the Circuit Court as follows:

"[1] In *any case* in which the jurisdiction of the Court is in " issue."

And also, whether the same right of review is not given by the Act of Feb. 6, 1889, 25 Stat., 693—commented on in Richmond, etc., R. R. Co. vs. Theuron, 134 U. S. 45—which gives an equivalent right. The exception or plea to the jurisdiction was filed and is printed as Exhibit " A " of this brief.

It seems to us that the lower court, as a court of law, sitting with a jury, could have no jurisdiction to entertain this cause. It is elementary that jurisdiction means the power to entertain and determine a cause, and includes, *ex vi termini*, the power to enforce what the Court decrees. Matter of Ferguson, 9 Johnson, 239. Nothing could be more offensive or more noxious, from the point of view of law and public policy, than the assumption of such power by a tribunal which does not possess it.

And because the erroneous assumption of jurisdiction is matter of such serious moment, and a uniform rule so desirable, the Congress has made the foregoing provisions in the Acts of 1889 and 1891.

Now, here was a suit, not upon contract or tort to recover money due, or damages, or specific property, real or personal; but, to obtain a decree which could only be rendered by a court of equity. If a party who has a complete remedy at law cannot go into a court of equity, it is equally true that to obtain such a decree as was prayed for in this case a party cannot go into a court of law. The relief sought in this cause is by a decree canceling or reducing an assessment and prohibiting, that is, enjoining, the collection of taxes. It is not within the province of a court of law to afford such relief any more than it can cancel a deed for error, or decree a specific performance of a contract of sale of a farm, or enjoin a nuisance.

The manner of redress at law is by a judgment for plaintiff, entitling him to recover a sum of money, or a certain thing with damages for its detention or injury; and, after the judgment, comes an execution, of some sort, to the sheriff or marshal to collect the money or deliver possession of the thing. But when a decree is desired to cancel, to rescind, to dissolve, to revoke, to reduce, to correct or to reform and to enjoin, the party must go into the Court of Equity. No other Federal Court has jurisdic-

tion; no other Federal court can render such a decree; no other Federal Court can enforce such a decree.

Counsel for the Bank in his brief refers, pp. 15, *et seq.*, to sundry cases in which it has been held that a Court of Equity cannot entertain jurisdiction to enjoin the collection of a tax on the sole ground of its illegality. The decisions thus cited are: Dows vs. Chicago, 11 Wall. 108; Hunnewinkle vs. Georgetown, 15 Wall. 547; State R. R. Tax Cases, 92 U. S. 575.

But these cases throw no light on the question at bar. They simply assert that, under *its general powers*, a Court of Equity will not enjoin the collection of a tax on the sole ground of illegality. But they do not declare that, where the Constitution and laws of a State provide for the reformation, reduction, and, *pro tanto*, rescission of an assessment by the Courts, such an equitable right shall not be enforced, in the Federal tribunal, on the equity side.

The State Courts of Louisiana make no distinction between the legal and equitable side. There is one suit by petition, and one side; whether the question is of suing for damages for assault or reforming a policy of insurance. But where the local law creates or expands an equitable right and the plaintiff chooses the Federal tribunal, it seems plain that he should go on the chancery side, under the rule consecrated in Holland vs. Challen, 110 U. S. 15, and the cases there cited by his Honor, Mr. Justice FIELD.

The case of Van Norden vs. Morton, 99 U. S. 381, is not in point. All thatwas really decided there was, that, inasmuch as Van Norden desired merely to remedy the evil of an erroneous levy of an execution on certain of his movables, he should have applied to the Court of law that issued the writ to rectify the error. If the decision be in point at all, it is in our favor; since it lays down the general proposition that when a new right is granted by

State law, as to reform, reduce or cancel an assessment by judicial decree, "the *jurisdiction* of such cases, as between the law "side and the equity side of the Federal Courts, *must be deter-* "*mined by the essential character of the case.*"

The case at bar is essentially an equity cause.

III.

We submit whether the appeal and writ of error will not lie under the Act of Congress of March 3, 1891, establishing Circuit Courts of Appeals, Section 6.

The peculiar provisions of Sec. 6 seem to give "an appeal, or "writ of error, or review of the case, by the Supreme Court of "the United States, where the matter in controversy shall ex- "ceed one thousand dollars besides costs," in "all cases not "not hereinbefore in THIS SECTION *made final.*"

The only cases in this, the 6th Section, *made final*, are those where the jurisdiction depends on citizenship, and those arising under the patent laws, under the revenue laws and under the criminal laws, and in admiralty cases.

This case is not in the category of those thus *made final in the 6th Section.* It confessedly involves a matter in controversy exceeding "one thousand dollars besides costs." It is respectfully submitted whether the writ of error and appeal herein are not justified by this provi-ion of the 6th Section.

It may be said in reply that this peculiar provision contemplates a second appeal from the Circuit Court of Appeals to this Court in this class of cases. To this we may rejoin that the rules prepared and promulgated for the Circuit Court of Appeals do not recognize any such second appeal and that the point is one worthy of consideration.

IV.

But if we are wrong in all these contentions, we yet submit

that the cause is properly brought to this Court, because "the " matter in dispute, exclusive of costs, exceeds the sum or value " of five thousand dollars."

In applying to the Circuit Judge of the Fifth Circuit for the writ of error and appeal we presented, with the petitions, the affidavit of Mr. J. Henry Shepherd, of counsel for defendants, as to the sum or value of the matter in dispute, and it was filed with the papers. It has been brought up to this Court by *certiorari*, and a copy is found in the Appendix of this brief, Exhibit " B." If it had not been made in the lower court, it could have been presented here.

The counsel for the Bank is pleased to be facetious respecting this affidavit: but we submit that it is an important and proper document. To correct the evil of numerous assessments in such a parish as that of Caddo, where there are State, City and Parish taxes, the Constitution of Louisiana of 1879 provides, Art. 203, that, "the valuation put upon property for the purpose of State " taxation shall be taken as the proper valuation for purposes of " local taxation in every sub-division of the State." The revenue laws, under this organic command, provide for *one* assessment, only, in Caddo Parish, and its recordation as a lien on property so assessed. The Bank in this case attacks this assessment, this one, undivided, indivisible judgment by the assessor establishing a certain sum as an amount assessed. The decree of the Court reforms, annuls or rescinds this one assessment, reducing it by the amount of $113,000.

The amount of public revenue thus lost is....	$4,265 75
And the penalties from Jan. 1, 1890.....	1,193 20
Total loss of public revenue	$5,458 95

There can be little dispute on these figures. The counsel for

the Bank admits in his brief that the priucipal sum above stated, $4,265.75, is involved. See his brief, p. 5, line 8 from bottom. He contends however that his client, in case of defeat, will not be liable to pay the 2 per centum monthly penalty from January 1st, 1890, amounting at time of the decree below to $1,193.20. This singular assumption finds no support in any law. The object of the penalty is to promote promptness in the collection of the public revenue. No tender was made by plaintiff of any amount. It has paid nothing. It has offered nothing. What the final outcome of the suit may be we cannot of course predict. We can assert about what it ought to be. And we claim that the decree or judgment should be reversed, and the plaintiff Bank made to pay us at least the sum of $6,040 with 2 per centum monthly interest from Jan. 1, 1890. In any event, the question of penalty is in *dispute*, and the whole amount in dispute is at least $5458.95. It is in vain for the Bank to argue that it would not owe this penalty in the event of a reversal of the decree. We claim that it would; that such an obligation exists, and will exist; that the assessment is correct; that the Bank cannot withhold taxes and then, in the event of defeat, escape the penalties which result from such intervening delay; that the public revenue is not subject to be withheld by such suits.

It is in vain for the Bank to claim, under the decision in Bruce vs. R. R., 117 U. S. 574, that this sum of $5458.95 is not *directly* in dispute. In the case of Bruce, the question was as to the effect a suit on coupons might have upon another suit on bonds. We have no suits on taxes in Louisiana. See Appendix "C." The assessment here attacked is in the nature of a judgment and has its lien and privilege. Its validity is the matter in dispute. If the decree below is wrong and is reversed, the assessment stands with all its legal results. One of those results will be that

the Bank will have to contribute to the public coffers the sum of $5458.95, which it now disputes, which the bill declares we claim and which we do claim.

We ask that the motion to dismiss be denied.

Respectfully submitted,

WILLIAM WIRT HOWE,

For Plaintiffs in Error and Appellants.

DECEMBER, 1891.

APPENDIX.

EXHIBIT "A."

FIRST NATIONAL BANK *versus* R. H. LINDSAY, ASSESSOR, et al. [No. 151] U. S. CIRCUIT COURT. *Western District of La.*

Now come the defendants in the above entitled suit, and except to plaintiff's suit which is on the law side of the Court, on the ground and for the reason that the allegations of plaintiff's bill or petition show that his remedy is not by an action at law but by injunction and bill in equity, and the Court is without jurisdiction to entertain this suit as an action at law.

Therefore defendants pray that this exception be sustained and plaintiff's suit be dismissed with costs.

J. HENRY SHEPHERD,
District Attorney, 1st Judicial District of Louisiana.
A. D. LAND,
City Attorney for City of Shreveport.

A true copy,
ATTEST: J. B. BEATTIE, *Clerk.*

EXHIBIT "B."

FIRST NATIONAL BANK OF SHREVEPORT *versus* R. H. LINDSAY, ASSESSOR, et al. [No. 151.] U. S. CIRCUIT COURT. *Western District of La.*

U. S. OF AMERICA—S.S.

J. Henry Shepherd, being duly sworn, deposes and says, that he is one of the Counsel of the defendants and is District Attorney of the First Judicial District in and for the Parish of Caddo, State of Louisiana, and that he is familiar with the facts of this case, and with the pleadings and proceedings therein; and avers that the amount in dispute in the above entitled cause, as disclosed by plaintiff's pleadings in his original petition, is the sum of six thousand and forty dollars, and by plaintiff's supplemental petition the sum of six thousand seven hundred and sixty-eight dollars, that the amount, as concluded by the judgment against the defendants, is the full sum of four thousand two hundred and sixty-five 75-100 dollars, and the further sum of

one thousand one hundred and ninety-three 20-100, interest, being the amount prescribed by the Revenue Act of the General Assembly of Louisiana *as a penalty* for the non-payment of taxes on Jany. 1st, 1890, the said Act prescribing a penalty of 2 per cent. per month until paid, there being *no tender* made of any amount of taxes by plaintiffs in the foregoing suit as a sum claimed to be due by them, therefore making the total amount concluded by the judgment, the full sum of five thousand four hundred and fifty-eight 95-100 dollars, as against defendants herein. The assessment, reduced is by law *a unit* and made by the State Assessor alone, and there is no power in either the City or Parish to make any assessment whatever, and the effect of the judgment (the assessment being indivisible) is to benefit the plaintiffs in the full sum of $5,458.95 and reduce the public revenue in that sum.

The exception to the jurisdiction was raised, as appears by the record, and such want of jurisdiction appears by the face of the record.

Sworn to and subscribed before me this 21st day of March, 1891. E. R. HUNT, Clerk. } J. HENRY SHEPHERD.

A true copy,

ATTEST: J. B. BEATTIE, *Clerk*.

EXHIBIT "C."

Extracts from Louisiana Constitution of 1879:

ART. 203. * * * * *

"The value put upon property for the purposes of State taxation shall be taken as the proper valuation for purposes of local taxation in every subdivision of the State."

"ART. 210. There shall be no forfeiture of property for the non-payment of taxes, State, levee-district, parochial or municipal; but, at the expiration of the year in which they are due, *the collector* shall, *without suit* and after giving notice to the delinquent, advertise for sale the property on which the taxes are due in the manner provided by judicial sales, and on the day of sale he shall sell," etc.

* * * * * * *

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CLERK.

SUPREME COURT OF THE UNITED STATES.

October Term, 1894.

No. 132.

R. H. LINDSAY ET AL., APPELLANTS AND PLAINTIFFS IN ERROR,

versus

THE FIRST NATIONAL BANK OF SHREVEPORT, ETC.

BRIEF FOR APPELLANTS AND PLAINTIFFS IN ERROR.

WM. WIRT HOWE,
Of Counsel for Plaintiff in Error, Appellant.

T. H. Thomason, Print. N. O.

SUPREME COURT OF THE UNITED STATES.

October Term, 1894.

No. 132.

R. H. LINDSAY ET AL., APPELLANTS AND PLAINTIFFS IN ERROR,

versus

THE FIRST NATIONAL BANK OF SHREVEPORT, ETC.

BRIEF FOR APPELLANTS AND PLAINTIFFS IN ERROR.

The peculiar character of the proceedings in the lower court compelled us to take both an appeal and a writ of error.

The plaintiff Bank in its lower court began its suit on the law side; yet the relief prayed and decreed was so plainly of an equitable sort that it was deemed proper to take both a writ of error and an appeal. Trans. pp. 18 *et seq.*

The plaintiff below, the First National Bank of Shreveport, alleged that its capital stock is divided

into 2000 shares of $100 each, and it gives the names of all its shareholders. It avers that the appellant and plaintiff in error, Lindsay, has assessed the shares of the stock, *against the shareholders*, on the tax-roll of the current year, 1889, at the rate of *eighty dollars* per share, aggregating the sum of $160,000. P. 1.

It is nowhere averred or pretended that the shares are not worth the par value of one hundred dollars. Indeed, we may infer from the allegations of the petition at page 3, that the Bank has a surplus of $40,000, which would make its shares worth $120 each, and in the amended petition, p. 5, plaintiff Bank avers that a portion only of its capital stock is worth $183,000.

The petition claims that this assessment, at $80, is not equal and uniform; that Lindsay, the assessor, has failed to list "other moneyed capital in the hands of citizens of the State," and has so deprived the shareholders of the Bank of the benefit of the rule of equality and uniformity established by the Constitution of Louisiana. It is also complained that the General Assembly of Louisiana has failed and neglected to provide an equal and uniform plan of assessment under the Constitution of 1879. The petitioner further declares, that in arriving at the assessment of said shares the assessor, Lindsay, and the Police Jury, as reviewers, took the capital stock of the Bank, viz., $200,000, and added thereto $40,000, the earnings of

the Bank, which did not and does not in any manner constitute any portion of the capital stock of the Bank, and which the Bank held and holds, in United States bonds, by law exempted from taxation. This shows that the assessing authorities, acting on a basis of $240,000, made an assessment of only two-thirds in value.

The petition further sets up the Act 85 of the General Assembly of Louisiana of the year 1888, Section 29 (27), being the existing revenue act of the State, which provides that actual shares of stock shall be assessed to the stockholders, and the taxes so assessed shall be paid by the bank, and that all property owned by the bank, taxable under Section 1 of said Act, shall be assessed directly to the bank, and the PRO RATA of such direct taxes, and of all exempt property, proportioned to each share of capital stock, shall be deducted from the amount of taxes assessed to the shares under said Section 29 (27). The petitioner then avers that the said earnings, meaning the surplus of $40,000, having been and being invested in property exempted from taxation, the said assessors and said Police Jury should have deducted the same proportionably from the assessment of the shares. The petitioner further avers, that by the provisions of the said 29th (27th) Section it is required to pay the taxes assessed to its stockholders, and complains that

this provision violates the Constitution of the United States, conflicts with the "underlying principles of free government," and is forbidden by the law of the land.

The prayer of the petitioners may be quoted in full as follows:

"That the said R. H. Lindsay, assessor, said Police Jury of Caddo Parish, through its President, J. M. Foster, and the City of Shreveport, be cited to answer hereto; that, after all legal notices and delays, there be judgment in favor of petitioners, declaring said assessment null and void, *and prohibiting the collection of any tax from petitioners or its shareholders;* or in the event the Court should not hold said assessment absolutely null, petitioner prays for a judgment reducing said assessment, so as to make it equal and uniform with other assessments, and striking therefrom the amount of property held by the Bank exempted from taxation, as hereinbefore set forth; and petitioner prays for all orders necessary in the premises, for costs, and for general relief." (P. 4).

The defendants in the cause appeared and excepted to the plaintiff's suit on the law side of the Court on the ground that the allegations of the plaintiff's bill or petition showed that its remedy was not by an action at law, but by injunction and Bill in Equity, and that the Court was without jurisdiction to entertain the suit as an action at law. (P. 4).

This exception to the jurisdiction was heard and overruled. (P. 5).

The plaintiff thereupon filed an amended petition, setting up that it held the amount of $183,000 in bonds of the United States, "constituting a portion of its capital," and so held the same at the time of the assessment, and averred that the assessment was an unjust discrimination against petitioner and its stockholders; that the shares of its stockholders were assessed at a greater rate than was assessed upon moneyed capital in the hands of individual citizens of the State; that United States bonds in the hands of individual citizens of the State were not and are not assessed and taxed; that the statute of the State of Louisiana under which said assessment was made discriminates unjustly against petitioner and its stockholders and violates the principle of equality and uniformity in taxation, by exempting such U. S. bonds from taxation when held by individual citizens of the States and taxing same when held by petitioner and its stockholders and avers said assessment and statute to be null and void. (Pp. 5 and 6).

To this amended petition the defendants below filed a peremptory exception or demurrer of "no cause of action," (p. 6) which was heard and overruled. (P. 7).

Defendants below thereupon answered by a general denial, by the further admission that the shares of the

plaintiff bank were assessed in 1889 to the respective shareholders at a valuation of $80 per share, but such assessment was at the rate of only two-thirds of the actual cash value of such shares, which were worth the sum of $120 each, if not more. The respondents specifically deny that the assessor or board of reviewers for the Parish of Caddo had wilfully or intentionally omitted any property from assessment or taxtion for the year 1889, and averred that if there was moneyed capital in the hands of individuals in the said Parish, not assessed for the year 1889, the same belonged largely to the shareholders of plaintiff bank and was not returned by them for assessment according to law. (Pp. 7 and 8).

The case was tried before the Court and a jury; the defendants below reserving four bills of exception on the trial; and the jury rendered the following verdict:

"We, the jury, find the assessable value of each share of stock in plaintiff's bank is twenty-three dollars and a half, after deducting from the assessment in controversy the amount of the United States and State bonds held by the Bank as portion of its capital stock." (P. 10).

The motion for a new trial having been refused, a judgment was rendered which, for the convenience of the Court, we may quote as follows:

"In this case, by reason of the law and the evidence and the verdict of the jury being in favor of the plaintiff, the First National Bank of Shreveport, it is ordered, adjudged and decreed, that there be judgment in favor of said bank against the State of Louisiana, *reducing* the assessment on each share of the capital stock of said bank, made against its several stockholders, as set forth in petition, for the year 1889, from eighty dollars a share to twenty-three $\frac{50}{100}$ dollars a share, said amount of twenty-three $\frac{50}{100}$ dollars being (according to the rate of assessing all property at two-thirds of its cash value, adopted by and governing the assessing officers of the Parish of Caddo for and during the year 1889, in making the assessment of said year) equal to two-thirds of the amount found by the jury to be the full assessable value of each share, reducing the aggregate assessment of the entire 2000 shares of the capital stock of said Bank on said assessment roll or tax roll of 1889, from one hundred and sixty thousand to forty-seven thousand dollars; and it is further ordered and decreed, that plaintiff have judgment for costs, to be taxed; and it is further ordered and decreed, that there be judgment to the same effect against the Parish of Caddo and against the Police Jury of said parish; and it is further ordered and decreed, that there be judgment to the same effect in favor of said Bank and against the City of Shreve-

port; and it is further ordered and decreed, that there be judgment against the defendant R. H. Lindsay to the same effect; and it is further ordered and decreed, that plaintiff have and recover from the defendants, *in solido*, costs, to be taxed."

The defendants in the suit and judgment or decree took both an appeal and a writ of error (pp. 18–24).

A motion was made by the Bank to dismiss, which was submitted on briefs in December, 1891, and denied. We beg leave to refer to the briefs on file on that motion.

ASSIGNMENT AND SPECIFICATION OF ERRORS.

I.

The Court below erred in overruling the first exception filed by defendants, the only remedy in the case, even if the plaintiff Bank were entitled to any relief, being by proceedings by bill in equity on the chancery side of the Court, and the law side of the Court being without jurisdiction.

II.

The Court below erred in overruling the peremptory exception or demurrer to the amended petition of the plaintiff below, the same showing no cause of action.

III.

The Court below erred in ruling out the testimony

of J. M. Foster, a witness for defendant, on the stand before the Court and jury, by whom the defendants offered to prove that E. J. Seaman and other shareholders mentioned in plaintiffs' petition had admitted to the witness that the assessment of their respective shares at $80.00 each was not excessive, as compared with the assessment of property generally in the Parish of Caddo in the year 1879, and especially that said Seaman had so admitted to said Foster, as shown by defendants' Bill of Exceptions No. 1, pp. 10 and 11.

IV.

The Court below erred in admitting the testimony before the jury, on behalf of plaintiff below, of J. M. Hollingsworth, W. C. Vance, N. B. Murff and Jno. R. Jones, as to the cash value and assessed value of certain alluvial lands in the Parish of Bossier and certain saw-mill property in the Parish of Natchitoches, and the relative assessment of similar property in the Parish of Caddo, the same being entirely irrelevant, illegal and misleading, as shown by the Bill of Exceptions reserved by defendants below, No. 2, pp. 11 and 12.

V.

The Court below erred in admitting on the trial before the jury the testimony of F. A. Leonard and other witnesses on behalf of plaintiff below to the effect that sundry persons, residents of the Parish of

Caddo in the year 1889, owned judgments, mortgage notes, rights, credits and money, which were not listed and assessed for taxation by the assessors of said parish for said year 1889, as shown by said rolls, the said testimony being irrelevant, illegal and misleading as shown by the third Bill of Exceptions reserved by defendants below. (Transcript, pp. 12 and 13).

VI.

The Court below erred in charging the jury upon the trial of the cause in the lower court as follows:

"The undisputed evidence and testimony, not objected to, shows that about the date of the assessment complained of, the plaintiff bank's moneyed capital was invested in U. S. and State bonds in some amount; which amount and date you must find for yourselves. The jury will deduct such amount from the moneyed capital of the bank. If you find that any such bonds were held by the bank at the time of the assessment, you will deduct from the bank's moneyed capital such sum as you find the bank held in such bonds, and then fix the assessable value of the shares for taxing purposes."

The said charge being erroneous, illegal and misleading, as will more fully appear by the defendants' Fourth Bill of Exceptions, pp. 14, 15.

VII.

The Court below erred in giving the judgment or

decree in favor of the plaintiff below, on the pleadings, verdict and case as made, which laid no legal basis for such judgment.

And plaintiff in error and appellant prays for a reversal of the final judgment or decree of the lower court.

ARGUMENT.

I.

The exception or plea to the jurisdiction should have been maintained.

It seems to us that the lower court, as a court of law, sitting with a jury, could have no jurisdiction to entertain this cause. It is elementary that jurisdiction means the power to entertain and determine a cause, and includes, *ex vi termini*, the power to enforce what the Court decrees. Matter of Ferguson, 9 Johnson, 239. Nothing could be more offensive or more noxious, from the point of view of law and public policy, than the assumption of such power by a tribunal which does not possess it.

Now, here was a suit, not upon contract or tort to recover money due, or damages, or specific property, real or personal; but, to obtain a decree which could only be rendered by a court of equity. If a party who has a complete remedy at law cannot go into a court of equity, it is equally true that to obtain such a de-

cree as was prayed for in this case a party cannot go into a court of law. The relief sought in this cause is by a decree canceling or reducing an assessment and prohibiting, that is, enjoining, the collection of taxes. It is not within the province of a court of law to afford such relief any more than it can cancel a deed for error, or decree a specific performance of a contract of sale of a farm, or enjoin a nuisance.

The manner of redress at law is by a judgment for plaintiff, entitling him to recover a sum of money, or a certain thing with damages for its detention or injury; and after the judgment, comes an execution of some sort, to the sheriff or marshal to collect the money or deliver possession of the thing. But when a decree is desired to cancel, to rescind, to dissolve, to revoke, to reduce, to correct or to reform and to enjoin, the party must go into the Court of Equity. No other Federal Court has jurisdiction; no other Federal Court can render such a decree; no other Federal Court can enforce such a decree.

Counsel for the Bank in his brief, on motion to dismiss, referred to sundry cases in which it has been held that a Court of Equity cannot entertain jurisdiction to enjoin the collection of a tax on the sole ground of its illegality. The decisions thus cited are: Dows vs. Chicago, 11 Wall. 108; Hunnewinkle vs.

Georgetown, 15 Wall. 547; State R. R. Tax Cases, 92 U. S. 575.

But these cases throw no light on the question at bar. They simply assert that, under *its general powers*, a Court of Equity will not enjoin the collection of a tax on the sole ground of illegality. But they do not declare that, where the Constitution and laws of a State provide for the reformation, reduction and, *pro tanto*, rescission of an assessment by the Courts, such an equitable right shall not be enforced, in the Federal tribunal, on the equity side.

The State Courts of Louisiana make no distinction between the legal and equitable side. There is one suit by petition, and one side; whether the question is of suing for damages for assault or reforming a policy of insurance. But where the local law creates or expands an equitable right and the plaintiff chooses the Federal tribunal, it seems plain that he should go on the chancery side, under the rule consecrated in Holland vs. Challen, 110 U. S. 15, and the cases there cited by his Honor, Mr. Justice FIELD.

The case of Van Norden vs. Morton, 99 U. S. 381, is not in point. All that was really decided there was, that, inasmuch as Van Norden desired merely to remedy the evil of an erroneous levy of an execution on certain of his *movables*, he should have applied to the Court of law that issued the writ to rectify the

error. If the decision be in point at all, it is in our favor; since it lays down the general proposition, that when a new right is granted by State law, as to reform, reduce or cancel an assessment by judicial decree, "the *jurisdiction* of such cases, as between the law side and the equity side of the Federal Courts, *must be determined by the essential character of the case.*"

The case at bar is essentially an equity cause, and its issues should not be wrestled with by a common jury.

II.

The court below erred in overruling the peremptory exception or demurrer to the amended petition of the Bank. As shown by the original petition (p. 3) the assessment complained of was made under the 27th Section of the Act, No. 85 of the General Assembly of Louisiana of the year 1888.

(The phrase "Section 29" in the transcript is a clerical error for 27).

Under this section, printed in appendix, the process of assessment is intended to be and is a valuation of the property of the shareholders. These shareholders are not parties to the suit, though their names are mentioned in the petition. They own shares of stock in the Bank, and there is no reason why they should not contribute to pay the expenses of the State, Parish and City Government in Shreveport.

The fact that the Bank held certain bonds of the United States shows no cause of action on its part in the premises. The assessment complained of is not on its property, nor is it on the United States bonds, as averred by the Bank itself (p. 3). The Bank is a juridical person distinct from its stockholders and the lawful purpose and object of the assessment is to compel those stockholders to contribute to the support of the government. It is their stock that is assessed, and it matters not how the property of the corporation itself is invested. The assessment complained of is not an assessment on the capital of the Bank, for an assessment on the capital is distinctly forbidden by the Section 27 above cited. An assessment on shares owned by individuals is not an assessment on capital of the Bank. Van Allen vs. Assessors, 3 Wall. 373, 383.

The allegation therefore in the amended petition, that the Bank holds sundry bonds of the United States as portions of its capital, is quite irrelevant.

Equally irrelevant is the assertion in the amended petition, "that in assessing said capital stock in which said amount of bonds was included, there was an ununjust discrimination against the Bank and its stockholders." This is plain from the reason given by the pleader, which seems to be that it is an illegal discrimination to exempt United States bonds in the

hands of individuals, and at the same time to include such bonds in an estimate of the value of bank shares.

It has been repeatedly held that National Bank shares may be assessed for taxation at their value without regard to the fact that the capital of the Bank, or part of it, may be invested in bonds of the United States. Van Allen vs. Assessors, 3 Wall. 573; People vs. Commissioners, 4 Wall. 244; Mercantile Bank vs. New York, 121 U. S. 145.

In the case of the First National Bank of Shreveport against the Board, in which defendant in error was plaintiff (41 La. Annual, 181), the Supreme Court of Louisiana decided this question in our favor, with respect to the assessment of 1887, under a similar statute. The case was argued at great length, and also on an application for a rehearing, and it is respectfully submitted that the decision is a correct one, and will be adopted by this Court, unless some federal right has been invaded. Lewis vs. Monson, 151 U. S. 545. This decision of the Supreme Court of Louisiana interprets the Constitution and Statute of Louisiana on the point and, as it does not contravene any federal right, would seem to be conclusive.

The peremptory exception should also have been maintained, because the plaintiff below does not pay or tender, or even offer to pay, such amount of taxes as it ought to pay. It practically concedes that it

owes some tax and it was so found. But it pays nothing, tenders nothing, and even offers nothing. And it prays that the payment of "any tax may be prohibited," Transcript, p. 4, and repeats this prayer at p. 6. This is enough to dismiss the case, and the exception should have been sustained, on the authority of Nor. Pac. R. R. vs. Clark, 153 U. S. 252, 272, and the decisions there cited. And see Stanley vs. Supervisors, 121 U. S. 535, 551; Albuquerque Bank vs. Perea, 147 U. S. 87, 90, and State Railroad Tax Cases, 92 U. S. 575, 616. The plaintiff below, in the case at bar, has tied up a large tax, of which a part, certainly, was due, for about five years.

III.

The Court below erred in ruling out the testimony of J. M. Foster as shown by defendant's bill of exception, Number 1 (pp. 10 and 11).

If this was a case to be tried on the law side of the Court and before a jury (which we do not admit), it would seem to be fair to admit testimony to show that the stockholders, and especially one of them, had admitted that the assessment at $80 a share was not excessive as compared with the assessment of property generally in the Parish of Caddo.

The object of the assessment was to reach the interest of the shareholder. See the statute as copied in

appendix. And these admissions of shareholders were pertinent in the case.

IV.

The Court below erred in admitting the testimony before the jury, on behalf of the bank, of the four witnesses as shown by Bill of Exceptions No. 2 (pp. 11 and 12).

If the Bank had a right to submit this question to a jury on the law side of the Court (which we still deny), such submission should be accompanied by some of the restrictions which experience has shown to be necessary in jury trials. These four witnesses, it would appear, were allowed to testify as to the relative cash value of *alluvial lands* in the Parish of Bossier, and their assessed value; and in regard to the comparative cash value and assessed value of certain sawmill property in the Parish of Natchitoches and relation to assessments of such *lands* in Caddo. These matters were plainly outside of any proper issues in the cause. Such testimony must have misled the jury, and perhaps contributed to their remarkable finding that the shares of stock of a bank of two hundred thousand capital, and forty thousand dollars surplus, are worth for assessment only the sum of forty-seven thousand dollars. 121 U. S. 145.

V.

The court below erred in admitting on the trial

before the jury the testimony of F. A. Leonard and other witnesses in behalf of the Bank, to the effect that sundry persons, residents of the Parish of Caddo, in the year 1889, owned judgments, mortgage notes, rights, credits and money, which were not listed and assessed for taxation by the assessors of said parish for said year 1889, as shown by the rolls. See Bill of Exceptions No. 3, pp. 12, 13.

It is respectfully submitted that such testimony could only mislead a jury. While taxation should be equal and uniform, it is simply chimerical to suppose that assessors can find or list all the personal property of the parish.

The testimony thus admitted could not properly affect the legality of the assessment complained of.

It is testimony that could not call for the application of any rule of law in favor of plaintiff below with which we are familiar. It could not bring the case within the regime of People vs. Weaver, 105 U. S. 539; Supervisors vs. Stanley, 105 U. S. 305; Mercantile Bank vs. New York, 121 U. S. 138, 155; or Whitbeck vs. Bank, 127 U. S. 193.

Giving the greatest scope to the testimony, as described in the bill of exceptions, it does not appear that the personal property referred to by these witnesses was known or pointed out to the assessor, and

omitted by him wilfully or even accidentally, even if such a fact could be relevant.

The testimony objected to could only puzzle the jury and impair their understanding of the case.

VI.

The court below erred in charging the jury, as set forth in defendants' fourth Bill of Exceptions and repeated in the *sixth* Assignment of Errors. The charge given is in direct conflict with the law as laid down by the Supreme Court of the United States and the Supreme Court of Louisiana, in the decisions above cited. It has been distinctly held by these and other decisions, that for the purpose of assessing for taxation the shares of National Bank stock, as against the shareholders, the fact that some of the assets of the Bank are invested in U. S. Bonds is not to be taken into account. An assessment against shareholders is not an assessment against the capital of the bank, nor against the items of which it is composed. The same rule would apply to the case where State Bonds formed a part of the assets of the Bank.

The charge of the Judge, therefore, in this respect, was plainly erroneous, and well calculated to mislead the jury, and it is impossible to see that the explanations made by him in the Bill of Exceptions can alter this manifest result.

VII.

Our seventh assignment of errors asserts that the Court below erred in rendering the judgment or decree in favor of the plaintiff below, as appears on the face of the record.

It appears on the face of the petitions of the plaintiff below, that its assets are $240,000; that each share is therefore really worth $120, and that each share has been assessed for only $80; and the verdict of the jury does not declare that each share is not worth $120, or that $80 is an unjust valuation; or, in strictness, that the defendants below have done any of the acts of which the plaintiff below complains. It is not in terms a verdict for plaintiff, but seems to be a special finding that the amount of bonds held by the Bank as portion of its capital stock is $113,000. Here is the verdict:

"We, the jury, find the assessable value of each share of stock in plaintiff's Bank is twenty-three dollars and a half, after deducting *from the assessment in controversy the amount of United States and State bonds held by the Bank as portion of its capital stock.*"

There can be no doubt as to what the jury found, as a matter of mathematics simply. The assesment

complained of, of 2000 shares at $80, makes a sum of $160,000

Reducing each share to $23.50 produces 47,000

Leaving amount of bonds held by Bank as portion of capital stock $113,000

It might be said, then, that the only thing the jury really decided was, that the Bank held, as portion of its capital stock, United States and State bonds of the value of $113,000, and the legal result was left to the Court.

Or, if it be held by your Honors that the verdict was a finding that the assessment ought to be reduced from $80 per share to $23.50, because a portion of the capital stock was invested in United States and State bonds, it does not determine how much of this amount is United States bonds, and how much State bonds, and is very uncertain, and if not uncertain, it yet lays no foundation for a judgment under the decision of this Court. In any view, it ignores, and so rejects, all the claims and contentions of the plaintiff below, except the claim that the assessment should be reduced by the amount of bonds held by the Bank, "as a portion of its capital stock."

This claim the law of this Court and of Louisiana rejects, yet the lower Judge refused a new trial, p. 10,

and rendered and signed the judgment of which we complain, and which is copied above in this brief.

In Insurance Co. vs. Piaggio, 16 Wallace, 378, 386, it was held, that where a verdict included an item of $5000, which was in excess of any lawful demand of the plaintiff below on the pleadings, it was error on the face of the record, which this Court would deal with without any bill of exceptions, or equivalent formality.

We submit, then, with confidence, that it was error for the court below to render the judgment found at page 16 and copied above in this brief. The jury simply found that the assessment of $80 a share was a fair one, and then erroneously deducted the value of the bonds, bringing the assessment in this way down to $23.50. Such a verdict could not be a just basis for a judgment or decree, which also cut the assessment down to $23.50, and we, therefore, ask that the judgment or decree be reversed, or such other order made as may be just.

Respectfully submitted by

WM. WIRT HOWE,

Of Counsel for Plaintiff in Error, Appellant.

APPENDIX.

Extract from Revenue Law of Louisiana, being Act 85 of 1888, Section 27:

"*Be it further enacted, etc.*, That no assessment shall hereafter be made under that name, as (on) the capital stock of any national bank, State bank, banking company, banking firm or banking association, or of any corporation, company, firm or association, whose capital stock is represented by shares, but the actual shares shall be assessed to the shareholders, who appear as such upon the books, regardless of any transfer, not registered or entered upon the books, and it shall be the duty of the president or other officer to furnish to the assessor a complete list of those who are borne upon the books as shareholders; and all taxes *so assessed shall be paid by the bank*, company, firm, association or corporation, which shall be entitled to collect the amounts from the shareholders or their transferees; all property owned by the bank, company, firm, association or corporation, which is taxable under Section 1 of this Act, shall be assessed directly to the bank, company, firm, association or corporation, and the *pro rata* of such direct property

taxes, and of all exempt property, proportioned to each share of capital stock, shall be deducted from the amount of taxes assessed to that share under this section. Such assessment shall be made where the bank, etc., is located and not elsewhere, whether the shareholders reside there or not; any president or other officer who shall refuse or fail to deliver said list to the assessor, shall be guilty of a misdemeanor, and on conviction shall be punished by fine or imprisonment, or both, at the discretion of the Court."

Office Supreme Court, U. S.
FILED.
NOV 26 1894
JAMES H. McKENNEY,
CLERK.

156-485

SUPREME COURT OF THE UNITED STATES.

No. 132 of October Term, 1894.

LINDSAY, ET AL,

versus

THE FIRST NATIONAL BANK OF SHREVEPORT, DEFENDANTS IN ERROR.

Brief and Argument of Counsel for Defendants in Error.

A. H. LEONARD,
Of Counsel for the Bank.



SUPREME COURT OF LOUISIANA.

No. ——.

LINDSAY, ET AL,

versus

THE FIRST NATIONAL BANK OF SHREVEPORT, DEFENDANTS IN ERROR.

Brief and Argument of Counsel for Defendants in Error.

STATEMENT OF CASE.

This is a suit at law instituted by The First National Bank of Shreveport, *to test the correctness of the assessment* of shares of its capital stock against the shareholders, made by the assessing officers of the State of Louisiana for the Parish of Caddo in the year 1889.

Under the revenue laws of that State then in force—see Appendix—assessments of property for taxation were made by an assessor appointed for each parish by the Governor.

On the assessment so made, known as the Tax List or Tax Roll, taxes were levied, by the State, by the Parish, and by any municipality existing in said parish.

The City of Shreveport being in the Parish of Caddo, the assessment or Tax Roll made by the assessor of that parish was the common Tax Roll for the State, the parish and the city, and on such roll each levied taxes. Such assessors were required to complete their assessment on or before the 1st of June of each year, and immediately thereafter to give public notice for the period of ten days that the tax lists were subject to inspection and correction for the term of twenty days. After the expiration of that term, the assessors were directed to lay the lists of property, with their valuation thereof, before the Police Juries of the several parishes, constituted Boards of Reviewers for their respective parishes and required to convene for that purpose on the first Monday of July in each year.

It was made the duty of such Board of Reviewers to proceed thereupon at once to arbitrate and determine all questions between the assessors and property owners, and to examine and pass upon the lists of property and the valuation thereof. They (said Boards) being invested with power to correct

errors, to decrease valuation, and to increase same after notice to taxpayer.

When the lists of property, with valuation thereof, have been passed upon by the Board of Reviewers, each tax assessor fills out three tax rolls from said lists, and on or before the first of September deposits one tax roll in the office in which the mortgage records of the parish are kept, the second in the office of the tax collector or sheriff, and the third in the office of the State Auditor.

The decision of the Board of Reviewers is final, unless set aside in accordance with Article 203 of the State Constitution, which ordains that, "Taxpayers shall have the right of testing the correctness of their assessments before the courts of justice."

When the Tax Roll is filed in the office in which the mortgage records of the parish are kept, notice is thereby given that the taxes shown by such roll are due and collectible, except as to those taxpayers who avail themselves of the right guaranteed to them by the Constitution.

The revenue law, conforming to the Constitution, provides that all taxpayers shall have the right of testing the correctness of their assessments before the courts of justice, in any proceedure which the Constitution and laws may permit, but the action

must be instituted on or before the first of November of the year in which assessment is made. Said action is declared to be a "preference" suit, to be tried as speedily as possible, without a jury, and in chambers if court is not in session.

That is to say, such action is a "summary proceeding."

Each share of stock in said Bank was assessed at $80, aggregating for the entire number of shares, $160,000: on which, if the assessment stands, the Bank will have to pay for its shareholders, under provisions of the State laws, taxes as follows: State $960, Parish $1280, City of Shreveport $3800, aggregating $6,140. After an appeal in vain to the Tax Assessor and to the Board of Reviewers, the Bank, availing itself of the remedy given by the Constitution and laws of the State, brought this action.

PLEADINGS.

The petition of the Bank alleges, the assessment of its shares at $80 a share, an appeal in vain to the assessing officers and Board of Reviewers for the cancellation or reduction of such assessment, the levying of tax thereunder, and that such assessment

is unlawful, erroneous, unjust, excessive and inequitable, for following reasons:

1st. The assessment violates the principles of equality and uniformity in taxation guaranteed by the Constitution of the State and by "The Law of the Land," in this, that said shares of stock are assessed at a much higher value proportionately than that at which other property of other citizens, subject to taxation, is assessed.

2. The tax as assessed on said shares is greater than that assessed on other moneyed capital in the hands of individual citizens of the State.

3. The assessing officers wilfully failed and neglected to assess and place on "The Tax List," moneys in the hands of individual citizens of the State, moneys by such citizens loaned out—bonds, judgments, notes, accounts and other credits held by and due to citizens of the State, to a value exceeding $1,000,000, all subject to taxation.

4. In the assessment of said shares, the assessing officers included $40,000, the earnings of the Bank, held by it in U. S. bonds, which should not have been included; because, Section 27 of Act No. 85 of 1888, the State revenue law, provides that the actual shares of stock of every national bank shall be assessed to the stockholders. That all property tax-

able under Section 1 of that Act, shall be assessed directly to the bank, and the prorata of such direct taxes and of all exempt property proportioned to each share of capital stock shall be deducted from the amount of taxes assessed to that share under Section 27. The earnings of the Bank being the property of the Bank, and taxable nnder said Section 1, should have been assessed directly to the Bank, and deducted from the assessment of shares.

5. That Act No. 85 of 1888 (the State revenue law), under which assessment complained of was made, and under which an attempt will be made to collect taxes based on such assessment, is unconstitutional, null and void, because the General Assembly of the State has wilfully neglected to comply with the express requirements of the State Constitution, which, to arrive at uniformity and equality in taxation, ordains that the General Assembly shall at its first session after the adoption of said Constitution, provide a system of equality and uniformity of assessment based on the relative value of property in the different portions of the State.

It is averred in petition, that the acts of omission and commission of the assessing officers relating to "The Tax List," destroy the uniformity and equality of taxation decreed by the Constitution and laws of

the State, violate the obligations therein imposed to treat all property alike, so that all property may bear an equal burden of taxation, and are subversive of the Act of Congress allowing shares in national banks to be taxed.

It is averred further, that by the necessary effect of the proceedings had in the assessment and levy of the tax on said shares, the shareholders have been deprived in matters of valuation and equalization of all benefits of uniformity in the burden of taxation secured to them by the Constitution and laws of the State, have been deprived also of the security afforded them by the limitations in the Act of Congress allowing state taxation of shares in national banks, and have been subjected to such excessive exactions as makes the franchises granted to them by the United States comparatively useless.

By an amended petition it is alleged, that the assessing officers in assessing shares of the Bank, included U. S. bonds to the amount of $183,000, constituting a portion of its capital stock, and made no assessment of such bonds held by other citizens, thus violating the principles of equality and uniformity in taxation ordained by the State Constitution, discriminating unjustly against said shareholders, and assessing said shares at a higher rate than

is assessed upon moneyed capital in hands of individual citizens of the State.

The defendants excepted to the amended petition on ground that it disclosed no cause of action, and to the original petition on ground that it disclosed a suit in equity and is not an action at law.

These exceptions being overruled, the defendants filed an answer in which they deny generally all allegations contained in plaintiff's petition, and aver that shares were assessed at $80 each, that amount being two-thirds of their actual cash value at date of assessment.

Defendants deny specially that the assessing officers wilfully or intentionally omitted any property from assessment, and aver, if there was moneyed capital in the hands of individuals not assessed, same belonged largely to said shareholders.

Defendants deny specially any discrimination or attempt at discrimination against said shareholders, or that they have any just cause of complaint.

On these issues trial by jury was had. The verdict fixed the assessable value of each share at $23.50, and thereupon judgment was rendered re-

ducing assessment from $80 a share to $23.50 a share. From this judgment, defendants have sued out writs of error and have also appealed.

THE EXCEPTION

that the amended petition discloses no cause of action, was probably interposed merely for delay. However this may be, it does not merit serious consideration and was properly overruled by Judge *a quo.*

THE PLEA TO JURISDICTION

on ground that the case presented by the pleadings is a suit in equity and not an action at law, was also properly overruled in lower court.

The learned counsel for defendants below, failed to state in the plea itself or in argument any reasons supporting the plea. I am unable to conceive how or why this action can be supposed to be a suit in equity. The State revenue law, in conformity to the State Constitution,—see Appendix—provides a simple and summary method by which taxpayers may test the correctness of their assessments before the courts, by preference suits to be tried without a

jury as speedy as possible, and in chambers if court is not in session. To quote from decision in Van Norden vs. Morton, 99 U. S. 381: "The remedy needs no formal chancery proceeding and is the most speedy and appropriate mode of obtaining relief. It is a short, summary proceeding which has no element of equitable right or proceedure."

The case at bar does not present any circumstances bringing it under some recognized head of equity jurisdiction. It does not call for any remedy purely equitable. It is not a case which must be brought in equity to prevent a multiplicity of suits.

It is simply an application to a law court to enforce by the ordinary processes of law an adequate remedy given by law.

Dorrs vs. City of Chicago, 11 Wall 108.

Hannewinkle vs. Georgetown, 15 Wall 548.

In State Railroad Tax cases, 92 U. S. 575, the Court say: "Neither illegality or irregularity in the proceedings, nor error or excess in the valuation, nor the hardship or injustice of the law, nor any grievance which can be remedied by suit at law, before or after the payment of the tax, will give a Court of equity jurisdiction."

Cheatham vs. United States, 92 U. S. 89, holds

that Courts have no general power of impeding or controlling the collection of taxes or of relieving the hardship incident to taxation, therefore this case is not cognizable by a Court of equity under its general powers.

If the decision of the Police Jury setting as a Board of Reviewers was conclusive under the law of Louisiana, the case at bar would not lie in any Court, but it is not conclusive. The law provides a simple, summary and efficient method by which any taxpayer dissatisfied with the action of the Board of Reviewers may test before the Courts the correctness of the assessment against him.

Taxpayers must resort to the remedy thus provided, they cannot otherwise obtain relief.

This Court has held when State laws make provisions for the correction of errors and irregularities of assessors, in assessment of property for purposes of taxation, the taxpayer must follow such provisions.

That the action of State boards of revision is judicial and thus judgments in cases within their jurisdiction are not open to collateral attack. If not corrected by some of the modes pointed out by statute, they are conclusive.

Stanley vs. Supervisors, 121 U. S. 535.
Williams vs. Supervisors, 122 U. S. 154.
Palmer vs. McMahon, 133 U. S. 661.

In case last cited, the Court say: plaintiff if dissatisfied with the final action of the tax commissioners could have had that action reviewed on *certiorari* under the State statute.

So in case at bar, the taxpayer being dissatisfied with the final action of the Board of Reviewers, was bound to have such action corrected by the mode pointed out by the statute, otherwise it would have been conclusive against him. The remedy pointed out by the statute of Louisiana having no element of equitable right or proceedure, is one which could only be applied by a suit at law; therefore the instant case is not a cause in equity. It follows that the plea to jurisdiction was properly overruled.

ON MERITS.

I.

Section 27 of Act No. 85 of 1888, the State revenue law, provides that no assessment shall be made under that name as the capital stock of any national bank, State bank, or of any corporation whose capital stock is represented by shares, but the actual shares shall be assessed to the shareholders; all taxes so assessed shall be paid by the bank or corporation,

which shall be entitled to collect the amount from the shareholders or their transferrees; all property owned by the bank, company or corporation, which is taxable under Section 1 of this Act, shall be assessed directly to the bank or corporation, and the pro rata of such direct property taxes, and of all exempt property proportioned to each share of capital stock, shall be deducted from the amount of taxes assessed to that share under this section.

Section 1 of that act levies annual taxes on all property in the State not exempted by the State Constitution; enumerates many kinds of property. Among others, real estate with buildings and improvements thereon, all personal property, all judgments, suits and causes in action, all rights, credits, bonds, stocks and securities of all kinds, promissory notes, open accounts and other obligations, all cash on hand on the day on which notice is served to make return of taxable property in conformity to this act, including checks, drafts and notes payable on that day. All coins, all currencies, bank notes and other paper moneys, all moneys loaned at interest, all shares of stock, and all other articles and things whatever possessing any money value. This Section closes with a proviso that, "This enumeration shall not be construed so as to exempt from

taxation any property or values not enumerated herein, and no articles or things hereinabove enumerated shall be assessed more than once in the same year."

Under the State revenue act, it was the duty of the assessing officers of Caddo Parish to assess shares in the national bank at Shreveport, which is in said parish, but Section 27 of the revenue act required the assessor to assess directly to the Bank all property owned by the Bank taxable under Section 1 of that act, and to deduct from the assessment of each share the proportion of such direct property tax, and of all exempt property, proportioned to each share.

All the property owned by the Bank, or which could be owned by the Bank, is taxable under Section 1, and in conformity to the express provisions of Section 27, should be assessed directly to the Bank. The amount of such assessment should be deducted proportionately from the assessment of each share.

If, for instance, 2000 shares in a bank were under this act assessed at $80 a share, aggregating $160,000, and if the property owned by the bank taxable under said Section 1, and under Section 27 required to be assessed directly to the bank, was assessed at

$160,000, then the shares would have no taxable value. If the assessment of the property directly assessed to the bank was any amount less than $160,000, then by dividing such amount by 2000, the number of shares in the bank, we find the amount to be proportionately deducted from the assessment of each share. The same result follows under the revenue act if the assets of the bank consist wholly or in part of property exempted from taxation.

Conceding that the State has power to tax shares in a national bank, then the State, in its discretion, may exercise that power fully or to a limited extent. The State may assess and tax such shares at their value, without any deduction, or the State may make deductions from the assessment of the shares. The State in its discretion has adopted the latter course. Its assessing officers are directed to assess shares in national banks, but are also directed to deduct from such assessment the assessment of all property owned by the bank taxable under Section 1 of the revenue act, which by Section 27 such officers must assess directly to the bank. This deduction was necessary, and was provided for to avoid double taxation, which is expressly prohibited by State revenue law.

The State may assess and tax shares in a national bank even when the entire assets of the bank consist of property exempted from taxation, or the State may direct that the value of exempt property be deducted from the assessment of such shares.

In the exercise of its discretion, the State has adopted the latter course. Its assessing officers are commanded by law to deduct from the assessment of shares, proportionately, the value of all exempt property.

With regard to shares in the First National Bank of Shreveport, the assessing officers failed and refused to do what they were required by law to do. They assessed the shares, but they failed and refused to make the deductions from their assessment of the shares which the law commanded them to make.

The State revenue act requires the assessing officers to assess directly to the bank all property owned by the bank taxable under section one—that section taxes all property which the bank could possibly own, and therefore taxes all property the bank did own. The entire assets of the bank, real estate, fixtures, furniture, moneys, bills receivable, rights, credits, bonds, judgments, shares of stock in other corporations, securities of all kinds, in fact personal property of every kind, should have been

assessed directly to the bank and deducted from the assessment of shares.

Again, a large portion of the assets of the bank consisted of United States bonds and State bonds exempted from taxation. To prevent a possible misunderstanding, I repeat that the State has power to tax shares of stock in national banks even though the capital stock consists entirely of United States bonds, which are exempt from taxation, but the State in the exercise of its power may direct that in the assessment of shares a deduction be made for value of all property exempt from taxation. The State has so directed and the assessing officers should have deducted from the assessment of the shares, proportionately, the value of the United States and State bonds held by the bank. The assessing officers made the deductions as directed by law, except with regard to shares in national banks, as against such banks they discriminated unjustly and injuriously.

It is to be presumed that the Legislature of the State, notwithstanding it is vested with power to tax shares in national banks, even when the capital stock is composed entirely of bonds or moneys exempt from taxation in hands of individual citizens, considered it inequitable and unjust to tax share-

holders in such banks on such bonds or moneys, and therefore directed the assessing officers to deduct from the assessment of shares the value of all property exempt from taxation.

If, in conformity to the requirements of the State law, the assessing officers had assessed directly to the Bank all property owned by it, taxable under Section 1, and deducted such assessment from the assessment of shares, the latter assessment would have been very largely reduced. The collection of the tax assessed against the Bank, except for its real estate, might perhaps have been successfully resisted, because such taxation is not authorized by acts of Congress relative to national banks; but it remains true, nevertheless, that the assessment of shares in such banks is illegal and invalid if made in violation of the provisions of the State revenue law.

When the assessment complained of by suit at bar is tested and corrected, as it should be, by recognizing and applying the provisions of the State revenue law, which were wilfully disregarded or through gross negligence ignored by the State assessing officers, it clearly appears that, there is no error to the prejudice of the plaintiffs in error in the judg-

ment of court *a qua* correcting and fixing such assessment.

II.

By reference to bill of exceptions taken on trial in lower court by counsel for the Bank, it will appear not only that there is no error to the prejudice of defendants in error, in the judgment there rendered, but that there is error to the prejudice of the Bank, and that the assessment complained of should have been decreed entirely null and void.

On trial in court *a qua* the following facts were proved by undisputed evidence:

1st. That the Police Jury of Caddo Parish, sitting as a Board of Reviewers, at a meeting held July 1st, 1889, adopted the following resolution: "That property in the parish be assessed at two-thirds of its cash value, *unless deemed advisable* by the Jury to assess in some instances at the full value."

2d. That for several years rights, credits, bills receivable and mortgage notes, were not assessed for taxation in Caddo Parish. That such omission was known to the Police Jury, and discussed by the members of that body, who by an understanding among themselves, took no action with regard to such omission.

3d. That in the year 1889, the year in which assessment complained of was made, the assessing officers of Caddo Parish knowingly omitted from the Assessment Roll rights, credits, bills and notes aggregating in amount over $500,000, subject to taxation, which as a result of such omission was exempted from taxation.

Such being the undisputed facts, counsel for the Bank asked the court to charge the jury, that because of such facts the assessment complained of is null and void, that the jury should so find and find also for the Bank as prayed for.

The bill of exceptions shows that the above facts were established and undisputed, that above charge was requested and refused, but the learned Judge *a quo* failed to give any reason for his refusal. It is difficult to imagine any reason therefor.

The State revenue law, in conformity with the State Constitution, provides that taxation shall be equal and uniform. Therefore the Police Jury, sitting as a Board of Reviewers, violated the law when they assumed the power (a power which they frequently exercised) to assess some property at two-thirds of its cash value and other property at its full value. Again, the law was violated by the Assessor and the Police Jury sitting as a Board of Re-

viewers when the Assessor, with the knowledge and approval of the Board of Reviewers, habitually and intentionally, for years, omitted from the Assessment Roll moneyed capital, represented by rights, credits, bills receivable and mortgage notes, all subject to taxation.

In the year 1889, when the assessment of shares complained of was made, the assessing officers knowingly omitted from the roll, and thereby exempted from taxation, rights, credits, bills and notes, aggregating in amount over $500,000, thus discriminating unjustly against the shareholders of the Bank.

It follows that the assessment of shares in the Bank was null and void, because it was in violation of the State law, and also of the act of Congress relative to State taxation of national banks.

III.

The defendants in Court below reserved four bills, three referring to evidence and one to the charge of the Court.

One of these bills, R. p. 12, was taken to the ruling of Judge *a quo* admitting evidence to show "that sundry persons, residents of Caddo Parish, in the year 1889, owned judgments, mortgage notes,

rights, credits and money, which were not listed and assessed for taxation in that year by the assessing officers."

The objection to the reception of this evidence was that the Assessor and the sureties on his bond are responsibe for taxes on all property wrongfully or intentionally omitted from assessment.

True ,Assessor and his sureties are so responsible to the State, but that fact does not affect admissibility of the evidence, which was, as stated by Judge *a quo*, relevant and competent.

Another bill, R. p. 11, was taken to the ruling of Judge *a quo*, admitting evidence to show the cash or market value of property in various parishes of the State, other than Caddo, the assessed value of same as made by the assessing officers of such parishes and the relative assessment of property of like nature in Caddo Parish.

This evidence was objected to on the ground that the facts proved by the evidence are not alleged in the petition of the Bank, which is limited in its allegations to assessments in the Parish of Caddo for the year 1889.

This objection is not well founded. The evidence objected to is clearly admissible under the pleadings. As stated by Judge *a quo*, the complaint is that the

assessment violates the StateConstitution, which requires that taxation shall be equal and uniform throughout the territorial limits of the State.

The Bank unquestionably had a right under the pleadings to show that the assessment of shares of its stock was made at a rate exceeding that at which property was assessed in other localities within the State.

Another bill was taken to the ruling of the court rejecting the testimony of J. M. Foster, a witness offered to prove that E. J. Leman, a shareholder in the bank, had admitted that he considered the assessment of his shares not excessive as compared with the assessed value of property generally. The bill at its commencement recites that this witness was offered to prove that such admissions were made by E. J. Leman *and other shareholders* in the Bank. This is an error, corrected however by Judge *a quo*, who states, that the witness was questioned only with regard to admissions of Leman. This evidence was rejected for the reason, as given by Judge *a quo*, that admissions of Leman could bind only himself, and could not affect the Bank or any one else.

IV.

The fourth and last bill of exceptions was taken to a portion of the charge given in court *a qua*.

This bill of exceptions cannot be considered, because it contains nothing but the charge and the objection thereto. In Worthington vs. Mason, 11 Otto 149, this court say: "Probably no bill of exceptions was ever certified to an appellate court before which contained nothing but the charge and the objection to it." The instant case presents perhaps the only bill of such nature certified since the decision in case just cited, in which this court say further: "There is in no part of this bill of exceptions " any statement of the evidence. There is no state- " ment that any evidence was offered or that any " was objected to, with the exception of the refer- " ence to it in the charge of the court; there is " nothing to show what was proved or what any of " the evidence tended to prove."

And this court held in case cited: "When error is " assigned upon instructions given, the bill of excep- " tions must set forth so much of the evidence as " tends to prove the facts out of which the question " is raised to which the instructions apply. When, " therefore, the bill of exceptions embodies only the " instructions given, and those refused, the court " will not reverse the judgment."

Apply this decision to bill of exceptions in case at bar. There is in no part of said bill any state-

ment of the evidence. There is no statement that any evidence was offered or that any was objected to. With the exception of the reference to it in the charge of the court, there is nothing to show what was proved or what any of the evidence tended to prove. The bill of exceptions embodies only the instructions given. Therefore the court should not reverse the judgment rendered in court *a qua*.

See also Wiggins vs. Barkham, 10 Wall 129.

The decisions of the Supreme Court of Louisiana are to same effect.

When whole matter does not appear in bill it will be presumed the Judge's charge was correct.

Gordon vs. Barbin, 7 N S. La. 250.

Where bill states no specific proposition on which the charge was founded, the court will presume Judge *a quo* did his duty.

Bowman vs. Ware, 18 La. 600.

The verdict and the judgment thereon rendered are good under other portions of the charge not excepted to, even though the exception under consideration was well taken, which is not the case.

Moreover, even if there were error, it is "Error without injury." No right can be recognized in a party who complains that he has failed to obtain all he required when he has already obtained too much. McMicken vs. Webb, 6 Howard 292. Though the

jury may have found their verdict on a wrong theory of the case, yet if the verdict was correct the plaintiff in error is not harmed by the misdirection of the judge. The result is right, though the manner of reaching it may have been wrong.

Decatur Bank vs. St. Louis Bank, 21 Wall 301.

The attention of the court is respectfully directed to the fact that in the commencement of the bill of exceptions counsel who prepared the bill did not state correctly that portion of the charge excepted to. Counsel will doubtless argue on the assumption that the charge was given as stated in commencement of bill, but this assumption cannot be properly made, as the charge as given is stated by the Judge *a quo* in the bill as follows:

The Court charged the jury that some evidence "was offered and admitted without objection to show "that at or about the time of assessment of 1889 "there was in the moneyed capital of the Bank "some amount or sum of United States bonds and "State bonds. They (the jury) must ascertain from "the evidence, the amount of such bonds so held "and the time they were so held by the Bank in its "moneyed capital, and the jury having ascertained "the amount held in such bonds and that said amount "was so held by the Bank at the time of assessment, "will in deciding what the shares in said Bank are

"worth for assessable purposes, deduct or take from "the moneyed capital of the Bank the sum or "amount of such funds as may have been in the "Bank's moneyed capital at the time of said assess- "ment, and after deducting said sums or amount fix "by their verdict the value for taxation of the shares "in said Bank.

"The Court so charges in relation to such re- "duction because, taking the two acts, one of Con- "gress, R. S. 5219, and the other the State act of "1888, providing for the assessment and collection "of taxes, and applying the Court's view of such "laws to evidence not disputed, showing that some "large amount of U. S. and State bonds were in "the bulk of the Bank's moneyed capital, and to "evidence of the same kind (i. e. undisputed) show- "ing that large amounts of moneyed capital consist- "ing of U. S. and State bonds *and other rights and* "*credits* of individuals, of corporations and of private "banks in which moneyed capital is not held in "shares in this parish (Caddo) and in other parishes "of the State, were not listed and assessed for parish, "city or State taxation, the Court believes under the "law and such undisputed facts, that an unlawful "discrimination was made against the plaintiff Bank, "and its shareholders. And the plaintiff Bank in

"the interest of its stockholders is entitled to relief "to the extent of deducting such bonds, national "and State, as were included in the bulk of the Bank's "moneyed capital at the time of the assessment. "The jury after deducting such sums will by their "verdict fix the assessable value of the shares as they "may find under the evidence and law as charged."

This charge is redundant and is not expressed in such clear and concise terms, as is usual with the learned Judge *a quo*, but the charge as stated by that Judge, is substantially and in effect as follows: There being undisputed evidence showing that to a large extent the moneyed capital of individual citizens, of corporations and of private banks in which moneyed capital is not held in shares, was not assessed for taxation in the year 1889, while shares in the plaintiff Bank were so assessed. This was an unjust and inequitable discrimination against the shareholders, forbidden by both Federal and State law. There being evidence showing that at the time of assessment the bulk of the moneyed capital of the Bank consisted of U. S. and State bonds, the jury will ascertain the amount of bonds so held and deduct same in fixing the assessable value of the shares.

Perhaps the Judge *a quo* failed to give the charge asked for by counsel for Bank (see bill exception, *infra* p. —), because he considered that he had sub-

stantially given to the Bank the benefit of such charge.

It is evident from the bill of exception now under consideration, taken by counsel for defendants below, and from the bill taken by counsel for the Bank (R. p. 15), that it was proved on trial in court *a qua* that moneyed capital to a very large amount in hands of individual citizens of the State and of the Parish of Caddo, and in hands of corporations, and of private banks in said parish and State, was omitted wilfully from assessment, and thereby exempted from taxation. It is also evident that the effect of such omission was to tax shares in the Bank "at a greater rate than is assessed upon other moneyed capital in hands of individual citizens of the State," which is forbidden by Act of Congress R. S. 5219, and also to impose on the shareholders an unequal burden of taxation, which is forbidden by the State Constitution and the State revenue law. Such being the case, the jury instead of reducing the assessment from $80 a share to $23 50 a share should have found the entire assessment of shares illegal and null. The certificate of the State Auditor of Louisiana, filed in evidence in court *a qua*, showed that the entire assessment of moneyed capital, *including shares of stock in national banks*, for the fifty-nine parishes of the State, amounted to $1,328,077.-95. Such assessment for the City of Shreveport

alone should have largely exceeded that amount, and for the fifty-nine parishes should have been many millions of dollars. Practically, there is no assessment throughout the State of moneyed capital in the hands of individual citizens of the State; therefore, there should be no assessment of shares of stock in national banks. This was in the mind of Judge *a quo* when he gave the charge under confideration. The amount of U. S. and State bonds held by the Bank at the time of the assessment, were deducted, not because they were U. S. and State bonds, but because such bonds constituted the bulk of the capital of the Bank and was moneyed capital, assessed for taxation unjustly, because moneyed capital in the hands of individual citizens of the State, and of corporations, and of private banks, was intentionally and habitually omitted from assessment, and thus exempted from taxation. The capital of the Bank, so far as it consisted of real estate and other property such as was assessed and taxed in the hands of individual citizens, was not affected by this portion of the charge of the court.

There is no error in the instructions complained of.

Exactly what is included in the words moneyed capital in the sense in which they are used in R. S.

5219, it is not necessary for the purposes of this case to state, but rights, credits, moneys in possession, moneys loaned at interest, notes, and demands against persons and corporations, are so included.

Evansville Bank vs. Britton, 105 U. S. 324.

In Pelton vs. National Bank, 101 U. S. 143, this Court say: "We are quite satisfied that any system " of assessment of taxes which exacts from the " owner of the shares of a national bank a larger " sum in proportion to their actual value than it " does from the owner of other moneyed capital val- " ued in like manner, does tax them at a greater " rate within the meaning of the Act of Congress."

In that case this Court held: "Although for pur- " poses of taxation the statutes of a State provide " for the valuation of all moneyed capital, includ- " ing shares of national banks, at its true cash value, " the systematic and intentional valuation of all " other moneyed capital, by the taxing officers, far " below its true value, while these shares are as- " sessed at their full value, is a violation of the Act " of Congress which prescribes the rule by which " they shall be taxed by State authority." Ib. 143.

In Supervisors vs. Stanley, 105 U. S., on page 318 this Court say: "If the assessors habitually and in- " tentionally, or by some rule prescribed by them-

" selves, or by some one whom they were bound to " obey, assessed shares of national banks higher in " proportion to their actual value than other mon- " eyed capital generally, then there is ground for " recovery."

The decisions cited strike at the unequal valuation of shares in national banks as compared with the valuation of other moneyed capital. A stronger case is presented when it appears that other moneyed capital is entirely or to any considerable extent omitted from assessment and thus exempted from taxation.

In Boyer vs. Boyer, 113 U. S. p. 693, this Court says, that shares in national banks cannot be subjected to taxation where a very material part, relatively, of other moneyed capital in the hands of individual citizens within the same jurisdiction or taxing district, is exempted from such taxation.

In case at bar, it was proved by undisputed evidence that moneyed capital in hands of individual citizens was practically entirely exempted from taxation by the assessing officers of Caddo Parish, and generally throughout the State. This was a discrimination against the holders of shares in national banks, which violates the Act of Congress. Moreover, as was said by the Court in Cummings vs. National Bank, 101 U. S. 155, the bank has the same

right under the laws and Constitution of the State where it is located as any citizen of such State has.

The Act of Congress permitting under certain limitations State taxation of shares in national banks, does not impose any tax. That must be done by the State, and the validity of the tax (provided there is no violation of the Act of Congress), depends on the Constitution and laws of the State.

The Constitution of Louisiana ordains that, "Taxation shall be equal and uniform throughout the territorial limits of the authority levying the tax, and all property shall be taxed in proportion to its value. In order to arrive at this equality and uniformity the General Assembly shall, at its first session after the adoption of this Constitution, provide a system of equality and uniformity based upon the relative value of property in the different portions of the State."—Art. 203. The General Assembly has neglected to comply with the provision of the Constitution. It seems to me that after the adoption of the Constitution of 1879, the General Assembly could not levy any taxes without first complying with the mandatory requirement of the Constitution. If so, the assessment complained of is null and void. It has been sometimes held that constitutional provisions, such as the one stated, do not, until the General Assembly has complied therewith, displace the revenue law previously in force. If

that view be accepted, the assessment complained of is null ond void, because it was not made in conformity with the law so previously in force.

However this may be, the fact that the General Assembly has failed to obey the mandate of the Constitution, has illustrated the wisdom of those who framed the Constitution.

Assessments of property for taxation throughout Louisiana are generally not only illegal, but absurd. The revenue law requires all property to be assessed at its cash value, but the assessing officers assess property generally at rates (varying with each parish) of from one-third to two-thirds of cash value, and in particular cases where for any reason they feel so disposed, assess property at a greater or less rate.

The Constitution and the revenue law of the State directs the assessment of all property. The assessing officers habitually and intentionally omit from their assessment much property, and particularly that class of property known as moneyed capital. The assessment made by the assessing officers of Caddo Parish for the year 1889, was simply a farce. It was illegal and void as a whole, and the jury, under instructions given by the Court, should have so found; but the jury, as juries usually do, compromised and gave only a part, where the whole should

have been given. The Judge *a quo*, with one exception, gave the instructions requested by counsel for the Bank, therefore the charge as a whole and the evidence to which it referred could not be presented to this Court by bills of exception taken in behalf of the Bank. It appears, however, from bills of exception taken by counsel for defendants below, that there was evidence showing: 1st. "That sundry persons, residents of Caddo Parish in the year 1889, owned judgments, mortgage notes, rights, credits and money, which were not listed and assessed for taxation in that year." R. p. 12.

2d. That large amounts of moneyed capital, consisting of U. S. and State bonds and *other rights and credits*, of individuals, of corporations, and of private banks in which moneyed capital is not held in shares, in Caddo Parish, and in other parishes, were not listed or assessed for taxation in the year 1889. R. p. 14.

It appears also from bill taken in behalf of Bank, that the assessing officers of Caddo Parish habitually and intentionally omitted from assessment rights, credits, mortgage notes and bills receivable, aggregating in amount for the year 1889 over $500,000, subject to taxation. R. p. 15.

This evidence, thus brought to the knowledge of

the Court, while it is only a small portion of the evidence adduced on trial, is sufficient to show, that the verdict of the jury should have annulled in *toto* the assessment of shares in the National Bank, because, as held by Judge *a quo* in his charge, such assessment violated both the State law and the Act of Congress. The judgment rendered in Court *a quo* should be affirmed.

Respectfully submitted,

A. H. LEONARD,

Of Counsel for the Bank.

APPENDIX.

Revenue Laws of Louisiana in force A. D. 1889.

CONSTITUTION.

Art. 203.—Taxation shall be equal and uniform throughout the territorial limits of the authority levying the tax, and all property shall be taxed in proportion to its value, to be ascertained as directed by law; provided, the assessment of all property shall never exceed the actual cash value thereof, and provided further, that the taxpayers shall have the right of testing the correctness of their assessments before the courts of justice. In order to arrive at this equality and uniformity, the General Assembly shall at its first session after the adoption of this Constitution, provide a system of equality and uniformity in assessments, based upon the relative value of property in the different portions of the State.

SUITS TO TEST ASSESSMENTS.

Acts of 1886, p. 143, Sec 27.—All taxpayers shall have the right to appear before the Board of Reviewers, during sessions of said boards, and be heard concerning the description of the property listed and

the valuation of same as assessed, and they shall have the right of testing the correctness of their assessments before the courts of justice in any proceedure which the Constitution and laws may permit, but the action to test such correctness shall be instituted on or before the first day of November in the year in which the assessment is made.

Acts 1888, p. 111, Sec. 36.—All suits relating to taxes or licenses shall be preference suits in all courts where pending, and shall be tried without a jury, as speedily as possible and in chambers if court is not in sessi n.

Sec. 35. In the suit of any taxpayer or taxpayers testing the correctness of his or their assessments before any court of justice, the decision of such court shall only affect the assessment of the person or persons in such suit.

REVENUE ACT 1888, ACTS OF 1888, NO. 85, P. 111.

Sec. 1. *Be it enacted, etc.*, That for the calendar year 1888, and for each succeeding calendar year, there are hereby levied annual taxes amounting in the aggregate to six mills on the dollar of the assessed value of all property situated within the State of Louisiana, except such as is expressly exempted from taxation by the Constitution, and the

term property as herein used means and includes *all real estate*, with the buildings and all other improvements thereon or thereto attached, all improvements upon public lands and all other untaxed lands, every share or portion, right or interest, either legal or equitable, in and to every ship, vessel or boat, of whatever name or description, used or designed to be used either exclusively or partially in navigating any of the waters within or bordering on this State, whether such vessel, ship or boat, shall be within the jurisdiction of this State or elsewhere, and whether the same shall have been enrolled, registered or licensed at any collector's office, or within any collector's district in this State, or not, including all vessels sailing under a foreign flag navigating any of the waters of this State, within or bordering thereon, controlled or run in whole or in part for the benefit of the person to be assessed, together with their stores and appurtenances, at their fair market value, or belonging to any person, company, association or corporation, in or out of this State, and not paying taxes at the domicile of the said company, person, association or corporation; all railroads and other roads, all canals and other ways of communication, travel or transportation, all locomotives, dummies and other motor powers;

all engines, boilers and other apparatus, appurtenances, appliances and attachments for steam electric and other engines; all telephone and telegraph lines; all machines and machinery, all cars, carriages, wagons and other vehicles; all patents, copyrights, trade marks, privileges, charters and franchises, including stock of any lottery charter or privilege domiciled in or out of this State, unless exempted by the Constitution of this State; all lumber, brick and other building material; *all movable property* and chattels; *all personal property;* all goods, wares and merchandize and other stock in trade, in possession, on hand. or under control, goods bought and paid for, goods bought and to be paid for, all goods on consignment for sale, without reference to whom they belong, goods in transit for forwarding, not on consignment for sale, are not to be assessed; all alcoholic, vinous and malt liquors; all household, kitchen and other furniture exceeding $500 in value; all jewels and jewelry, diamonds, pearls and precious stones, real or imitation; all gold and silver ware and silver plate. paintings, engravings, statuary and other works of art, bric-a-brac and articles of vertu and ornaments; all horses and other live animals; all personal property held in trust or by a wife or for a minor child; all pro-

perty held, controlled or administered in each separate capacity as president, cashier, treasurer, liquidator, assignee, master, superintendent, manager, sequestrator, receiver, trustee, stakeholder, depository, warehouseman, keeper, curator, tutor, executor, administrator, legatee, heir, beneficiary, father, agent, attorney, usufructuary, mandatory, fiduciary or official capacity; the cash value of all *judgments, suits and causes in action; all rights, credits, bonds, stocks and securities of all kinds, promissory notes, open accounts and other obligations; all cash* on hand on the day upon which the notice is served to make return of taxable property in conformity with this act, *including checks* payable on that day and drafts and notes due at that date which have not been included as moneys at interest or debts due; *all borrowed money or deposits in banks or elsewhere.* The amount of cash on hand will not be lessened or offset because money is owed or by liabilities of any kind, but must represent the full amount standing in the name of the person to be assessed or subject to his control on the day above mentioned.

All coins, U. S. and foreign, current or uncurrent; all currencies, bank notes and other paper money; all moneys loaned at interest; all shares of stock in all banking, insurance, manufacturing and all other

incorporated or non-incorporated companies, chartered under the laws of Louisiana, or under the laws of any other State than Louisiana—*and all other articles and things whatever possessing any money value.* This enumeration shall not be so construed as to exempt from taxation any property or values not enumerated herein; provided that no articles or things hereinabove enumerated shall be assessed more than once the same year.

Sec. 27. No assessment shall hereafter be made under that name as the capital stock of any national bank, state bank, banking company, banking firm or banking association, or of any corporation, company, firm, or association, whose capital stock is represented by shares, but *the actual shares shall be assessed to the shareholders*, who appear as such upon the books, and it shall be the duty of the president or other officer to furnish to the assessor a complete list of those who are borne upon the books as shareholders; *all taxes so assessed shall be paid by the bank*, company, firm, association or corporation, which shall be entitled to collect the amounts from the shareholders or their transferees; *all property owned by the bank*, company, firm, association or corporation, which is taxable under Section 1 of this Act, *shall be assessed directly to the bank*, com-

pany, firm, association or corporation, and *the pro rata of such direct property taxes* and of all exempt property, proportioned to each share of capital stock, *shall be deducted* from the amount of taxes assessed to that share under this section.

Sec. 2. The Governor shall appoint one tax assessor for each parish in the State, (except the Parish of Orleans,) who shall hold office for the term of four years.

Sec. 6. It is made the duty of the tax assessors, throughout the State, *to place upon the assessment list all property subject to taxation.*

Sec. 12. The Auditor of Public Accounts shall prepare and have printed and forwarded to the several assessors tax lists in the form provided in Section 16 of this Act.

Sec. 18. The tax assessor shall fill up the column for valuation with such valuation of each item of property as he considers just.

Sec. 22. The police jurors of the several parishes throughout the State are hereby appointed and constituted boards of reviewers for their respective parishes.

Sec. 23. The said board of reviewers shall meet on the first Monday in July in each and every year, and the several assessors shall lay before them all of

the said lists of property with the estimated actual cash value thereof extended, as listed and valued by the said assessors, together with the lists and valuations made under oath, of those property owners who believe the assessor's valuation to be in excess of the actual cash value of the property therein enumerated, and the said board shall proceed at once to arbitrate upon the said lists of property and cash valuation, and their decision shall be final, unless set aside in accordance with Art. 203 of the Constitution.

The said board shall then proceed to examine all the aforesaid lists of property submitted to them by said assessors, and should they find any property to have been illegally or wrongfully assessed in the listing or valuation thereof, it shall be their duty to correct same.

They shall also equalize the assessments of all properties of the like character and relative value within their respective parishes; provided no valuation shall be increased unless the taxpayer be served with notice.

* * * * * * * *

After having passed upon and determined the correctness of any list, and the valuation thereof, the same shall become final, *unless set aside or changed* as provided by law.

Sec. 31. The Auditor shall furnish to each tax assessor three rolls in such convenient form as to meet the requirements of this Act, and the assessor shall proceed to fill out the said tax rolls from the lists as soon as they are passed on by the Board of Reviewers, and he shall deposit one tax roll in the office in which the mortgage records of the parish are kept, the second in the office of the sheriff, and the third in the office of the Auditor, before the 1st day of September of each year.

Office Supreme Court U. S.
FILED.
DEC 18 1894
JAMES H. McKENNEY,
CLERK.

152-481

Supreme Court of the United States.

OCTOBER TERM, 1894.

No. 132.

R. H. LINDSAY ET AL.

vs.

FIRST NATIONAL BANK OF SHREVEPORT.

Supplemental Brief for Plaintiffs in Error and Appellants.

I.

The bank has taken no appeal or writ of error and has assigned no error, and its bill of exceptions, found at page 15 of the Transcript, cannot be considered; nor is that bill of exceptions any evidence of the allegations of fact recited therein. The lower judge refused to give in his charge either the recitals of fact or the conclusions of law as set forth, and the whole subject of the bill is out of the case. We are constrained, therefore, to point out that the recitals

of "undisputed evidence" at pages 19 to 21 of the brief of the bank, being the second point, must necessarily be disregarded.

II.

Objection is made at page 24 *et seq.* of the bank's brief to our fourth bill of exceptions. We submit that the fourth bill, pages 13 and 14 of Transcript, contains much more than a charge and an exception, and sets forth with sufficient fullness an important question. The lower judge, in his charge, as excepted to, and in his comments thereon in the bill, states that there was undisputed evidence showing certain recited facts, and he charges what he deemed to be the legal result, and we excepted. Nothing more could be necessary to fairly present the question here.

III.

We are obliged to point out that the calculations and argument set forth at pages 29 to 31 of the bank's brief find no legal support in the record, even if they are relevant to the discussion of this cause.

But if it be assumed from the recitals of the third and fourth bills of exception that some personal rights and credits in Caddo parish escaped assessment in 1889, that fact could not justify the rulings of the judge or the judgment he rendered on the verdict. As we have already shown, it did not appear that such omissions were important or intentional, or that such property was ever pointed out or known to the assessor. The assessor is not omniscient, nor should the revenue of the State, city, and parish be impaired by omissions of an uncertain amount.

IV.

But, as we have shown in our original brief, the verdict of the jury, carefully considered, deals only with the question of the deduction of certain bonds, and ignores and therefore *rejects all the contentions of plaintiff below* except that it owned certain bonds. (See pages 20 to 23 of our original brief.) Taking the verdict under which the bank claimed its judgment and comparing it with the judgment, the reversible error is plain.

Respectfully submitted.

W. W. Howe,

Of Counsel for Plaintiffs in Error and Appellants.